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JAMES WILSON

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POLITICAL SCIENCE CLASSICS

ISSUED UNDER THE GENERAL EDITORSHIP OF LINDSAY ROGERS,
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SELECTED
POLITICAL ESSAYS
OF
JAMES WILSON

EDITED WITH AN INTRODUCTORY ESSAY

BY

RANDOLPH G. ADAMS, PH.D.

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EDITORIAL FOREWORD

"Possibly the profoundest theorist of the Revolution"—this is the way in which Professor A. F. Pollard, the English historian, describes James Wilson. Yet the theories of the profoundest theorist are not adequately accessible to students of political philosophy and American history. The Federalist has been reprinted many times. Its papers are available in a great variety of editions. This is as it should be, for The Federalist is a mine of political wisdom. Why has James Wilson been neglected? All the historians of the constitution emphasize the importance of Wilson's writings. "Second to Madison and almost on a par with him was James Wilson," remarks Dr. Farrand. This opinion is echoed by other students of the period.

In the absence of a complete edition of Wilson's works this collection of some of his more important papers should fill a real gap. Just how great the gap is will be shown by the bibliography of the works of James Wilson which concludes this volume. It is the only complete Wilson bibliography which has ever been published. Its care and thoroughness will be acclaimed by the bibliographical specialists and will be useful to all students of the theories of the founding fathers.

The editor of this volume is admirably equipped for the task he has undertaken. He is a historian, a librarian, and a political scientist. Mr. Adams had his attention first drawn to Wilson when preparing his book "The Political Ideas of the American Revolution." This was published in 1922 and was recognized as a notable contribution to literature dealing with the period. In this volume James Wilson looms large. Particularly did it appear that his theories were apposite in respect of recent developments

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Editorial Foreword

within the British Empire—both in their constitutional and international aspects. The very title of Wilson's pamphlet of 1774 seemed to indicate so much the clearest conception of the nature of the struggle between Great Britain and America expressed by any of the controversialists on either side of the Revolutionary struggle that it appeared well worth while to present in a new form some of Wilson's essays.

Mr. Adams is the librarian of the W. L. Clements Library at the University of Michigan, an institution devoted solely to the collection of manuscripts and rare and important books on American history. He shows in his introduction, however, his interest in the modern developments of the study of politics. His remarks on recent "researches" that have been carried on, are particularly in point. A few months ago one of the most distinguished of living political scientists remarked that fifty years ago when he began to teach and study he and his colleagues did little research. They tried to think. "Now," he continued, "the political scientists work so hard at research that they have little time to think." The measure of truth in the latter part of this remark may be disputed by some of those who are now engaged in researches or who are familiar in detail with the work that is being done. Certain it is, however, that James Wilson was a profound thinker and that what he wrote is worth reading in connection with the problems of the present day political world.

L. R.

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INTRODUCTION

We live in an age of expectancy. Thinking men and women are waiting with a kind of wistful eagerness to see whether scientific investigation may yet reveal formulæ which will rescue humanity from the catastrophes to which half-knowledge, or a misapplication of knowledge have brought the world. Will the physicist yet learn something about the possibility of rearranging the parts of the atom, so as to give us control over forces which now control us? Will investigators discover the true nature of certain diseases, and a means of eliminating them, in time to save sufferers now living? No time in human history holds more possibilities than the present. Human beings have learned so much in the past five hundred, the past hundred, nay, the last ten years, that it is a pity they have not learned more. The one thing which saves us all from a drab pessimism is the realization that discoveries, inventions and other types of accretion to knowledge are being made now with an accelerated, not a regular, rapidity—that the things we know, however infinitesimal, are being added to in a geometric, not an arithmetic ratio.

But what shall it avail humanity to learn things which elevate the human race above the beast, if the slow progress of the science of politics jeopardizes every other field of endeavor? Of what use is it to save the victims of disease, if our ignorance in matters political merely reserves them for slaughter by machine guns and aerial bombs?

I make no apology for speaking of the science of politics. I am willing to accord the term "science" to any body of knowledge, systematized and formulated for the purpose of

discovering fundamental truth. None of the inaccurate methods of observation, nor of recording phenomena now employed by students of politics is any more feeble, nor more absurd than the methods employed by students of physical science in the middle ages. The study of politics is of ancient lineage: since the days of Plato and earlier, some of the greatest mentalities of the world have not disdained to organize the facts of human association that from them might be gained some deeper knowledge of how human beings can be induced to live together decently in a world which all other scientific investigators are constantly making smaller. That narrowing of the world is rendering the problem of how to get people to live together ever more and more difficult.

But the eager expectancy of no body of sufferers from human ills is more poignant than that of the people who are watching for political scientists and politicians to devise some formula of international relationships which will render war less probable and finally make it impossible. Any light which the political thinkers of a past century have to throw upon this question it is now peculiarly appropriate to take into consideration.

My reason for being willing to place once more before the modern reader some of the political writings of James Wilson is an ever increasing conviction that he made a contribution of considerable importance to that problem of politics which is today of supreme interest—the regulation and control of national groups in and by some species of international political organization.

The eighteenth century was one of a great deal of abstract political thinking. It would not have occurred to James Wilson, or to John Adams, to sit down and discover whether the current means of electing members to the colonial legislature was an efficient method of ascertaining public opinion. They were too busy laying foundations to engage in anything so eminently

practical. A great change has come over political science since their day. We do less thinking in the abstract, we make our generalizations with more care, or, having gathered some facts, we refrain from all conclusions, lest we be thought "propagandists." We are more modest than our forefathers; and yet, it often occurs to me that we have lost something. The facts ascertained by the serious student of politics do not filter down to the multitude, because the serious student is afraid to draw conclusions. The multitude is then influenced by the uninformed who boldly dictate facts from the plenitude of their own ignorance. Could anything in the twentieth century be more pathetic than the sight of a political boss in the city of Chicago or in New York City prescribing what the facts are concerning such an event as the American Revolution? Yet that actually did take place in the twentieth century. Might not our better political thinkers today borrow a little of the courage of their eighteenth century friends and rush in where political necromancers have not feared to tread?

After reading some scholarly and carefully footnoted modern political treatise, I often long for the downrightness of the eighteenth century when, with all their superficiality as far as research is concerned, men often hit the nail on the head. But there were many of them who were certainly not superficial. John Adams was not, and neither was James Madison, nor Jefferson. Their works have long, and many times, been published and commented upon. Yet the more I read of James Wilson, the more I marvel that his works have not received the publicity accorded to the others. His writings were many of them published contemporaneously in pamphlet or newspaper form; his collected works (really only a small portion of them) were published by his son, Bird Wilson, in 1804, and a part of these were reprinted by James D. Andrews in 1896. Perhaps 1804 was a very unfortunate time for their publication. Wilson was a fierce Federalist and in 1801 the "Virginia Dynasty" had

begun its long tenure of office. But the bulk of Wilson's literary labors, including all his surviving letters, remain in manuscript, as yet unpublished. They have been collected, edited and annotated by Mr. Burton Alva Konkle of Philadelphia to whom I am indebted in the preparation of this book. Attention cannot too often be directed to the fact that the scholarly world still wants an edition of Wilson's complete works, printed from the manuscripts. If this brief selection stirs up interest which will bring that event any nearer, the present publication will not have been in vain.

As I write there is within a few feet of my desk a book-case containing fifty-four editions of that remarkable classic in American political literature, *The Federalist*. The question naturally arises as to why these writings of Hamilton, Madison and Jay have gone through so many editions while James Wilson's similar essays of the year 1787 find in this volume only their fifth reprinting. Historians are frequently confronted by that question as to why one document is remembered, while another, regarded as equally important by contemporaries, and even by historians in their soberer moments, is ignored. It will not do to say that one is more important, or better written or more lucid than the other. In this particular case, I am frequently inclined to deny to any two essays in *The Federalist* any such intrinsic superiority. Documents which appear and re-appear in history are too often the result of mere fads, the product of good advertising by enthusiastic admirers, or the endorsement of a popular writer whose suggestion has been picked up and carried on and on by an ever widening circle of imitative writers, who do not trouble to go back and examine for themselves the genuineness of the original claim made for the point they emphasize. American history itself begins with such a document. In 1507 Waldseemüller wrote that since Americus Vesputius had discovered the new continent, it ought

to be named America, after him. Away went the fiction and laboring truth has never overtaken the error. We are irretrievably "Americans."

I. INTELLECTUAL HERITAGE

Merely to relate that James Wilson was born near St. Andrews, in Scotland, September 14, 1742, and that he came to New York at the age of twenty-three, is to omit a host of things the modern political scientist wants to know. One must remember what Scotland of the 1750's and 1760's was. It was the day of Hume, who, with all his deficiencies when viewed from the angle of modern critical scholarship, was in his day a great historian, and thinker. It was the day of Thomas Reid, who was by no means the least of the eighteenth century intellectual philosophers. It was the day of William Robertson, who, in a sense, originated the most comprehensive theory of American history, which was given its fullest expression in Justin Winsor's *Narrative and Critical History of America*, and seems now to receive its best interpretation in the United States in the hands of Herbert E. Bolton and the California School of history. But above all, these were the days of Adam Smith.

James Wilson received a scholarship at St. Andrews first, and from there he passed to the University of Glasgow during the days when Adam Smith was the rector. It is impossible to ignore the fact that Wilson then lived in an intellectual atmosphere where the nationalistic conceptions of the mercantilist theories were being undermined. The stage was being set for the introduction of a man who could think through these matters and see that the political scientist of the future must think in terms of continents and not in terms of the economic self-sufficiency of the British Empire.

It is often a mistake to lay too much emphasis on intellectual

sonship. It is not my intention to imply that William Robertson and Adam Smith influenced James Wilson to become the broad thinker he was. Such influences are exceedingly difficult to prove. But in the Scotland of the second half of the eighteenth century, the intellectual atmosphere certainly was one in which historical and political thinking was jumping over the narrow walls of nationalism, in which some men at least were thinking in international terms. Is it, then, any wonder that a man who left Scotland in 1765 should have brought to America ideas which became an integral part of the background of the American Revolution? Americans were groping for a theory of decentralization. Was it likely that men who could not get beyond the idea of the supremacy of a single political body were going to find it?

But probably more important than either the days at St. Andrews or those at Glasgow, were the days which James Wilson spent at Edinburgh. There was at work one of the greatest Scotsmen in the field of political philosophy in the eighteenth century, Adam Ferguson. In the very year that Wilson left for America there was published that *Essay on Civil Society* (1765) in which were restated the theories of government and law by consent, which underlie all Wilson's political works. It has been said that "the critical spirit of Hume and the historical spirit of Montesquieu were most attractively combined in Ferguson."¹ No one who has read the political writings of Wilson can fail to be impressed with the fact that this remark applies equally to him.

Another Scotsman of this group was Robertson's cousin, James Burgh, whose *Political Disquisitions* (1774) was a starting point for many an Englishman's criticism of the rotten borough system. Of course this work found favor in America. Wilson was one of those who secured its republication in Philadelphia after the Revolution had begun.

¹ W. A. Dunning, *Political Theories from Rousseau to Spencer*, p. 65.

One more element in Wilson's political heritage deserves notice, and that is involved in the fact that Scottish political thinkers and writers were often closer to the Continental political philosophers than were their English brethren. What Scotland drew from the Continent did not by any means come by way of England. It was not John Hampden speaking to Charles I who said "If princes exceed their power, they may be resisted and even deposed," but it was John Knox speaking to Mary, Queen of Scots.² John Knox did not take his training second hand, for as we well know, he went to the Continent and lived there for some time. Scotland had its own tradition of political philosophy quite independent of John Locke or Thomas Hobbes. And, of course, it is not to John Knox, but to his contemporary reformer, George Buchanan that we look for the systematic presentation of this theory of revolution. But I am not primarily concerned with tracing the continuity of political theory in Scottish history, nor whatever relationship it may have the Continental political thinking.

Nevertheless, even a superficial reader feels the presence of some definite connection between the thinking of James Wilson and that of the Continent with its reliance upon the foundation of the Roman Law. Perhaps this is in some measure due to his Scottish training. It would require a great deal more space than I have at my disposal to trace the relationship between James Wilson's treatment of the natural law and that of Thomas Aquinas. It would form a fascinating subject for research. Yet one cannot but be struck with the parallel between Aquinas' striving to solve the dualism of the authority of the pope and the authority of the emperor, with Wilson's efforts to make clear that a man could at the same time be a citizen of the United States and a citizen of the State of Pennsylvania. Both men thought in almost universal terms, and I hope I may not be claiming too much for my subject

² Preserved Smith, *Age of the Reformation*, p. 366.

by suggesting that it is time Americans knew a little more about their own Aquinas, particularly in these days when the dualism of federal or state jurisdiction is being complicated by the problem of an international jurisdiction.³

But among the Continental writers whom Wilson read with care, the influence of Hugo Grotius is not to be overlooked. Wilson, I think we may say with justice, was the first American who wrote upon the subject of international law. His evidently much used and constantly read copy of *De Jure Belli ac Pacis* is still in existence. Naturally we may expect to find, as we do find, numerous footnotes in Wilson's works to the writings of Puffendorf, Vattel and Burlamaqui.

But, as remarked above, all this matter of "influences" may be overdone, and it seems to me that it would not comport with sober historical fact to dwell upon it at such length as to give the impression that James Wilson but followed in the beaten path of his predecessors. The old British Empire in which James Wilson emigrated from one part to another in 1765, was formally rent asunder in 1776 when Wilson and his colleagues put their names to the Declaration of Independence. In the same year came from the press the *Wealth of Nations* which certainly sounded the death knell to the economic theories upon which that old British Empire was founded.

II. THE RELATION BETWEEN LIBERTY AND INDEPENDENCE

The American Revolution has, in the last few years, occasioned a surprisingly large number of new books. Besides the earlier works of Alvord and McLaughlin, there have been a profound piece of research by Schlesinger, a masterly synthesis by Van Tyne, a brilliant study of the Declaration of

³ F. Aveling, "St. Thomas Aquinas and the Papal Monarchy" in F. J. Hearnshaw's *Social and Political Ideas of some Medieval Thinkers*,

Independence by Becker, a critical analysis of the constitutional aspect of the struggle by McIlwain, an ably edited book of documents by Morison and an original volume of essays by C. M. Andrews. Why this sudden interest by such a galaxy of stars? Whatever has been the cause of all this re-examination of the sources—we cannot escape the suspicion that possibly something happened in the American Revolution the significance of which has not been fully understood. Perhaps human thought was enriched at that time by some ideas whose force is not yet spent—possibly not yet well begun to show effect.

Certain it is that the thinkers of the American Revolution made a conscious effort to solve what I have called the supreme problem of politics, and which Maitland described as “finding a theory which will mediate between absolute dependence and absolute independence.” In discussing the subject Maitland was content to translate and edit another’s work on the *Political Theories of the Middle Age*. Surely one cannot go far astray in taking such a model and confining one’s own remarks to a mere introductory essay.

In the year 1774 appeared a flood of political essays. They occupy ten times as much space in neighboring book cases as *The Federalist*. It is possible that someone has read them all—but to one who has read only a goodly number of them, three stand out above all the others. They are John Adams’ *Novanglus*, Thomas Jefferson’s *Summary View*, and James Wilson’s *Considerations on the Nature and Extent of the Legislative Authority of the British Parliament*. While I cannot concur in Moses Coit Tyler’s hearty denunciation of the dullness of John Adams’ essays, yet it has always seemed to me that neither *Novanglus* nor Jefferson’s essay was in the class with Wilson’s. Adams and Jefferson were out to prove a point and they succeeded admirably. But one can well picture a lot of thick-headed English country squires sitting in the House of Commons and replying, “Well, what are you going to do about it?”

Wilson's essay is very different. He states what he thinks ought to be done, and that with admirable clarity. It is not to be inferred that the squires would have understood him, either, but one would like to have a look at the mental reaction of the "East India Company Bloc" who, whatever their prejudices, had also some capacity for thinking. Still, it is doubtful whether even they would have understood Wilson's suggestion that it was possible to mediate between dependence and independence. Most American Congressmen and newspaper writers can't understand it yet.

The Province of Pennsylvania produced a number of men, who, though they were exceedingly indignant at the conduct of the British Ministry from the Stamp Act to the outbreak of the Revolution, yet were most reluctant to go to war with England. Perhaps Mr. Beard would tell us this was because Philadelphia was the principal seaport of the colonies, where a large body of importers and exporters had business which would be seriously affected by a war. Perhaps, as Dr. Sharpless, or Dr. Rufus Jones might tell us, it was the influence of the Society of Friends (Quakers), which still persisted, and whose opposition to war in principle was well known. Some of these less radical patriots were really groping for a practical solution of the problem whereby the colonies might get what they wanted, yet remain a part of the British Empire. They did not want independence. They said so in no uncertain terms, as did the more stable elements in society in many other colonies. There were some Pennsylvanians, like Joseph Gallo-way, who participated in the First Continental Congress, yet could not swallow independence and so left the country and went to England. Others opposed independence to the very end, and refused to sign the Declaration, yet stayed on in the colonies. Of such John Dickinson is an example. There were others who insisted that America could be free without being

independent, and turned to independence only as a last resort when they became convinced that no one in Westminster had the brains to understand that America desired only freedom and would be willing to put up with Dominion self-government. To this last group belongs James Wilson. His final utterance in favor of reconciliation was the *Address* of January, 1776, which is reprinted here, but which was never adopted by Congress, simply because it was already too late. Indeed, Wilson probably realized it was too late, for afterward he explained to Madison that the object of the address was to get people into a frame of mind to accept the idea of independence, which many people were not too ready to receive. Wilson, instead of fleeing like Galloway, or sulking like Dickinson, boldly cast his lot with the patriots and signed the Declaration of Independence.

The part he played in American and Pennsylvania politics from this time on is attested by the fact that he was one of only six of the "signers" who retained their political reputations long enough to sign the Constitution of the United States eleven years later,

The admirers of Thomas Paine credit him with having jolted the Americans into the idea of independence, when many of the best political thinkers of America were still struggling to find their salvation inside the British Empire. It is a question whether the publication of *Common Sense* was an un-mixed blessing. Suppose that men of the calibre of James Wilson had been allowed to work a little longer at the idea that freedom and independence were not synonymous? Might not they have been upon the verge of a genuine contribution to political thought?

No one will deny that two of the greatest experimental political laboratories for working at the problem of reconciling the "rights" of free and so-called "sovereign" political groups

with the similar rights of other such groups, are the British Empire and the United States. James Wilson worked in both laboratories.

In the Britannic experiment, the issue came over whether the legislative authority of the British Parliament extended over the colonies. Wilson denied that it did, but "a denial of the legislative authority of the British Parliament over America, is by no means inconsistent with that connection which ought to subsist between the Mother Country and her Colonies." Such a connection did not imply the supremacy of the Mother Country, indeed "the superiority of Great Britain ought to be rejected," for the Commons of Britain "have no dominion over their equals and fellow subjects in America."

It is perfectly well understood today that one of the most useful functions performed by the King of England is to serve as the tie which binds together the parts of the Britannic Commonwealth of Nations, which have long since become utterly free from any control by Parliament. This was precisely what James Wilson contended was the proper function of the King. He denied that the Colonies owed any allegiance to Parliament, or to the realm of England—and drew the inevitable conclusion "that all the members of the British Empire are distinct states, independent of each other, but connected together under the same sovereign, in right of the same crown." What else is the Britannic Commonwealth today?

The stumbling block of most writers on the American side during the controversy which preceded the Revolution, was the question of how the trade of the British Empire should be regulated, if Parliament had no right to pass laws governing the colonies. Practically all of them were willing to grant that one concession to Parliament—there seemed no alternative save commercial chaos which would follow on interstate and internecine tariff wars. James Wilson met the situation in a more constructive fashion than any of his contemporaries:

"it has been the opinion of some politicians of no inferior note, that all regulations of trade are useless; that the greatest part of them are hurtful; and that the stream of commerce never flows with so much beauty and advantage as when it is not diverted from its natural channels." But since he was a hard-headed Scotsman, living in the principal commercial town of North America, he did not allow a vision of universal free trade to run away with him and suggested that perhaps the power of regulating the trade of the Empire might be added to the royal prerogative and the king exercise it. This point, of course, would have required further elaboration, for the colonials understood quite as well as any Englishman, the nature of the limitations of the power of the king since 1688. Possibly some kind of an imperial conference with preferential trade privileges inside the empire might have been devised.

Wilson had no doubt that the colonial assemblies were the constitutional equals of Parliament. "We do not send members to the British Parliament—we have parliaments of our own." He was quite unwilling to concede that the American colonies were anything less than equal partners in the British Empire, equal with Great Britain and equal to one another, yet he was most reluctant to break away from the Britannic idea.

But the proposition about colonial "parliaments" just quoted, occurs in a paragraph which contains an even more interesting reflection. By January of 1775, some months before Lexington, matters had reached a critical stage. In an address to the Pennsylvania Convention, Wilson devotes some oratory to the reiteration of his proposition that he wants to find a solution inside the British Empire. Then he launches forth into a consideration of the nature of constitutional law, as an American lawyer understands it, that is a truly remarkable forecast of America's contribution, the doctrine that there can be such a thing as an unconstitutional law, and if so, that the law is utterly null and void, no matter by what "supreme" legislature it was passed.

In discussing the Boston Port Bill and its sister "intolerable acts," he says "To prove, at this time, that those acts are unconstitutional and void is, I apprehend, altogether unnecessary." This statement I have called interesting, because it was quite beyond the comprehension of an English lawyer of that period that there could be such a thing as an unconstitutional law. That doctrine was a development of American jurisprudence. Yet here is Wilson talking about it as though it were so well known that he need not even discuss it. Had the British Parliament been able to understand that there was a constitutional limitation upon what they might do, they might have better understood the American claim that there were other things which Parliament could not do. Wilson then goes on and discusses the nature of a colonial charter in a way which only proves once more that in the formation of the Federal Constitution, the Americans were drawing on their own legal and political experience as colonists, quite as much as upon any foreign source. It is no discovery of modern research that the state constitutions took their origin in the colonial charters of trading companies—our revolutionary forefathers understood that quite as well as we do.

Indeed, James Wilson's three essays, which are here reprinted, written before 1777, all show a familiarity with English constitutional history which cannot but elicit our wonder. Not that we would go to such essays today to ascertain the facts of English constitutional history, but that we must go to them to ascertain what our revolutionary forefathers *thought* those facts were. What mankind thinks to be the fact is frequently more potent in human affairs than what the fact actually is.

The last of the three revolutionary essays, the *Address* of 1776, is a document which has yet another interest for us today, when we are seriously studying the relation of psychology to politics. It is the product of a mind usually temperate, but unusually acute. Wilson was not always as outspoken as Jeffer-

son, yet in the *Address* one finds a somewhat sober minded Philadelphia lawyer employing the same condemnatory language which six months later appears in the "indictment clauses" of the Declaration of Independence. Students of the social sciences are beginning to pay more attention than was formerly the case, to the statements of grievances which come from discontented groups within a community. By that is meant, they seem to be realizing that such statements are not so interesting as polemics as they are for raw material of psychological investigation. When have incipient strikers reached a point when it is dangerous to push them any farther? When have the protests of minority language groups become sufficiently articulate to make it fool-hardy to continue policies of repression or neglect? Someday, perhaps, we will have studies which will supply partial answers to such questions. The howls which come from the fringe of lunatics in any reform movement, we can all ignore. But when the professional and propertied classes, which very definitely have something to lose by political upheavals—when these begin to talk sedition, then it is time for the political psychologist to notify the politician that he had best bestir himself. The *Address* of 1776 is an example of the inside workings of an American mentality which has been driven just as far as it could be driven.

One other point of Wilson's political writings at the period of the Revolution: he kept insisting that power came primarily from the people, that the people alone were sovereign. If the King and his Ministers would only understand the implications of this point, all other difficulties would clear themselves up. Wilson held that the British Parliament was simply assuming a power which the people of the colonies had never granted it. This violated the proposition "that all power was originally in the people, that all powers of government are derived from them, that all power which they have not disposed of still continues theirs,—are maxims of the English Constitution

which, we presume, will not be disputed." No one will be so naïve as to pretend that there is anything startlingly original about this proposition. It has been held since the time of ancient Greece. In his volume on ancient political theories Dunning has remarked "Must sovereign power be ascribed to the mass of the people, or to some limited class, or to some individual? Primarily, Aristotle answers, to the mass of the people. For the aggregate virtue of the whole people exceeds that of any particular part." ⁴ Similarly, so Gierke informs us, in the medieval period "an ancient and generally entertained opinion regarded the will of the people as the source of temporal power." ⁵ But although this has been understood since very early times, there have been many periods when mankind has entirely lost sight of the idea. One cannot resist the idea that many Englishmen of the eighteenth century had forgotten it. Wilson consistently followed this doctrine in all his writings, even when his contemporaries began to waver on the point.

III. IMPERIUM EX IMPERIIS

Wilson continued as a member of the Continental Congress until 1777, and served again from 1782 to 1783, and yet again from 1785 to 1787. During this period he was enabled to observe the inefficacy of government under the Articles of Confederation and to make up his mind on what the constitutional needs of the United States really were. He became convinced that the inefficiency of the Continental Congress was in no small degree due to its inability to go beyond the letter of the law as the law was laid down in the Articles of Confederation. It became increasingly clear to him that Congress must look beyond the letter of its instructions before anything like a respon-

⁴ W. A. Dunning, *Political Theories, Ancient and Medieval*, I, 68.

⁵ Otto Gierke, *Political Theories of the Middle Age*, (Maitland tr.) p. 38.

sible and effective government could be expected for the United States.

In his pamphlet *Considerations on the Bank of North America*, published in 1785, he took occasion to state his views on the implied powers of the Congress—a question which was to be an object of controversy for the next fifty years. Here, several years prior to the formation of government under the Constitution, we find him weighing the merits of the issue which was to be a contributory cause of the division of the people of the United States into two major political parties. Even before the day of the Federalists and the Republicans the question arose as to whether Congress had power to institute a Bank of North America. The Articles of Confederation were at the time the only instrument of government. They were silent on the point. They did, however, specifically reserve to the states all state powers not specifically conferred on the United States. But, inquired Wilson, did any state have the power to charter a Bank of North America for all the states? Clearly not, as this would have presumed in any individual state a jurisdiction extending over all the states. Obviously no state had any such power. It must have been equally apparent that since no state possessed any such power over all the states, the fact that it did not delegate such power to Congress did not by any means imply that it retained such power. The individual state simply never had any such power. Then, if the United States chose to exercise such a power, it did so neither in contravention of the states' right, nor because the states had delegated such a right, but because it, the United States, derived that power from a totally different source. The United States obtained certain powers simply by becoming an independent nation—power which none of the states theretofore possessed, or could possess. In this capacity as an independent nation, it could act, did act and had to act, long before the Articles of Confederation conferred upon it certain additional powers theretofore possessed by the states.

Wilson contended that any national government would inevitably have such powers—independent of what the states delegated. “It is no new position,” he said, “that rights may be vested in a political body, which did not previously reside in any or in all the members of that body. They may be derived solely from the union of those members.” In support of this argument he adduces the case of the formation of new states for the United States out of the territory north-west of the Ohio River, the “Old Northwest.” The year before, in its Ordinance of 1784, Congress had actually resolved that part of the north-west should be divided into distinct states, looking forward to their having a separate corporate existence. No such power was given it in the Articles of Confederation. Possibly Article IX contemplated the addition of other colonies, already formed, but the work of actually creating such political corporations was not a delegated power. Wilson contended that no argument could be brought against the power to charter the bank which could not with equal cogency be brought forward to deny the validity of the Ordinance of 1784, and so, of course, those of 1785 and 1787. Such an early appearance of what has been termed the doctrine of implied powers ought alone to rank Wilson high in the history of his country.⁶

Having so created a bank, Wilson claimed this would be one of the acts of a national state, which that state could not with impunity revoke. Laws passed respecting all the citizens might easily be repealed, but a law which was in the nature of a contract with certain citizens, upon which those citizens were going to rely, was not so easily revocable,—a doctrine, which of course, found its way into the Constitution, Article I, Section 10.

⁶ My friend, Professor Jesse S. Reeves, objects to this being called the “doctrine of implied powers,” because he says it goes much farther. It should be called, he believes, a “doctrine of inherent sovereignty.” I willingly defer to his judgment. In any event it is an interesting historical fact, whatever the validity of Wilson’s contention may be.

The specific arguments adduced in favor of the bank itself, belong rather in the realm of economic than political theory—but the essay is here reprinted in its entirety because of the intrinsic interest of the politico-economic thinking it displayed.

When the futility of trying to run a government without a doctrine of implied powers became apparent to a sufficiently large and influential group of the population—the United States met in a Federal Convention to revise the Articles of Confederation. What it did is history. James Wilson was a member of the Convention from the state of Pennsylvania. As to the part he played in that assembly, one cannot read the story as it appears in the record without being amazed at the undue importance given in popular knowledge to the parts played by Washington, Hamilton, Randolph and others. No writer likes to be guilty of excessive quotation of encomiums or laudation of his particular subject. That James Bryce has written of Wilson “Few men in that great generation to which Wilson belonged, equalled him” is interesting, but of course only an opinion. That Justice Harlan has said that Wilson “was recognized as the most learned member of the constitutional convention” is really no more than a statement of fact. But American lawyers and constitutional historians have never denied Wilson his place in the front rank of the members of the Convention. Yet, if I may be pardoned for singling out one man’s estimate as being worth more than all the others put together, I should be inclined to select the statement of Max Farrand, whose *Records of the Federal Convention* leaves nothing more to be said, and whose *Framing of the Constitution* epitomizes his years of research in that field. He gives first place among the actors at the Convention to James Madison, as others have done. Why should not posterity heed Dr. Farrand when he continues “Second to Madison, and almost on a par with him, was James Wilson”?

As to the particular part played by Wilson in the making of the Federal Constitution, the cost of printing is far too high

these days to justify a writer in repeating what is already in print, and from more competent hands. The works of McLaughlin, Beard and Farrand are easily obtainable and there seems no reason to doubt the quotation given above. Personally I have often been inclined to rank Wilson above Madison, but I am content to await the publication of Mr. Konkle's findings in his great definitive edition of *The Life and Writings of James Wilson*. We do know that in the past thirty years, James Wilson has been steadily gaining ground in the estimation of writers of American history, and it is only necessary to let nature take her course, with an occasional effort to help nature a bit.

Still, one may not dismiss Wilson's part in the Constitutional Convention without observing how insistently he applied once more the rule that the people are the ultimate source of all power. The people of the British colonies in North America should have been treated as groups co-equal with Great Britain. Failing this, they had become independent, and were setting up their own government. What kind of a government should it be? Why, a government of the people of the United States, of course. What else? This is the crux of the matter. Whether we view the era of the formation of the Federal Constitution as a struggle between the small states and the large states, as writers like Farrand interpret it, or whether we look at it as a battle between those who wanted a strong central government and those who desired a weak one, according to its effect on their pocket-books, as Mr. Beard would picture it, the fact remains that what was going to be the really important question for the next sixty years was whether or not it was to be a government of the people of the United States, or a government of the states of the United States. No reader of the Records of the Federal Convention can fail to be slightly amused at the frantic energy with which the delegates debated some questions which were really going to be of no consequence, once the machinery was set going. This is no reflection on them, for they were no more

prophets than we are. But the real question which began to divide the country in 1789 and which was not finally settled until 1865 was whether there was any such thing as the people of the United States.

Even the most superficial survey of Wilson's part in the Federal Convention shows him constantly bringing to the fore the proposition that the people of the United States did exist and ought to be consulted at every turn. He favored the popular election of the members of the House of Representatives. But he also favored the popular election of the president. He opposed the idea of equal representation in the Senate, for that was a concession to the separable identity of the states. He favored the ratification of the Constitution by state conventions chosen by popular vote, rather than ratification by state legislatures. Yet, in foreseeing that some individual states, by their failure to ratify at all, might imperil the whole plan of a national government, and thereby frustrate the possibility of the people of the United States saying whether or not they wanted to exist as such, Wilson insisted that ratification of the Constitution by all the states was not necessary.

On that memorable thirtieth of June, when the Federal Convention was deadlocked, because the small states men insisted on equal rather than on proportional representation, the right of the "states" was urged in a language which shows that some of the members had the idea of a state as a separate member of the family of nations—that the states were to retain what they were pleased to call their "sovereignty." Delegates talked wildly of their right to join some foreign power in case their wishes were not granted. Wilson announced in a language which could not be misunderstood "If the minority withhold their consent to the new plan, if they will have their own way and go out of the Union, then let them go. Shall three fourths be ruled by one fourth? Shall three fourths give up their rights for the support of an artificial being called state interest? For

whom do we make a constitution? Is it for men, or for imaginary beings called states, a mere metaphysical distinction?"

Had the full import of such words been really comprehended, how many years of political controversy might have been avoided. His solution of the British imperial problem had been to understand that the people had a right to be consulted, and to act in their capacity as citizens of their respective provinces, each of which was the political equal of Britain. He now insisted with equal fervor that having gained their right to be so regarded, having gained control of their own destinies through their state legislatures, the time had come for them to move one step farther on and act in the capacity as citizens of the United Provinces, or Colonies or States, and to create a frame of government adequate to the already existing national consciousness.

Were it possible to select one aspect of his political thought which appears to stand out in importance, it would seem to be this ability to see that the people could act in their capacity as citizens of Pennsylvania and at the same time be citizens of a larger political body, the United States. Here, indeed, we find him at work upon the same old problem—trying to find some way to get a number of political groups to give up a certain amount of independence in the interest of a greater whole and trying to get the nature of that problem understood.

It is in Wilson's effort to get the Constitution adopted by his state of Pennsylvania that this concept comes out most clearly. Here again, in view of the work of McMaster and Stone, *Pennsylvania and the Federal Constitution*, one has no right to tarry with details. Suffice it to say that of all Pennsylvania's large delegation to the Federal Convention, James Wilson was the only one chosen to sit in the State Convention which was called to ratify the Federal Constitution. His manuscript notes of the proceedings of that Convention are preserved at the Historical Society of Pennsylvania, and constitute one of our most impor-

tant sources of information on the subject. Besides this, there have survived several of his addresses in support of the Constitution, two of which are reprinted in this volume, one was delivered at an open meeting in October, 1787, and the other was his great address to the Convention itself in November.

The popular appeal was, like the various issues of *The Federalist*, an effort to expound particular aspects of the Constitution which seemed to be creating opposition. It is the lucidity with which he presents his case that tempted the remark made a little earlier in this present writing, that no admirer of Wilson's writings need apologize to Hamilton and his colleagues. To the charge that the proposed Federal Constitution was going to destroy the state governments, he points out that, on the contrary, the state governments were a necessary and integral part of the new machinery—again that people could be citizens of the United States without losing their identity as citizens of their particular state. Again, the proposition that all power comes from the people resolves all the artificial difficulties adduced by the opponents of the Constitution. If one was going to take seriously the proposition that the state was sovereign obviously one was going to have trouble in seeing how any part of that sovereignty could be given to a federal government, without taking some of it away from the state. If the national government was to be sovereign (as the British Parliament claimed to be) obviously this involved a serious diminution of the power of the states. But if one saw at the outset that neither state nor nation was sovereign, that the people were sovereign, that they could delegate to or withdraw from the state any powers they saw fit, and similarly delegate other powers to the national government, the way out was exceedingly simple. That was as far as the world had gotten in James Wilson's time, and all students of American constitutional history know how difficult it was to get the people of America to go even that far. But they did work the matter out between 1789 and 1865. They did apply

the principle of the sovereignty of the people to the problem of getting various groups to pull together in a larger group. It took nearly a hundred years and a bloody war, but they did work it out. The problem which now challenges the political scientist is the next step, that is, getting the larger groups to work together in a yet larger group.

A much more carefully studied contribution to the literature of the ratification of the Federal Constitution was Wilson's *Address to the Pennsylvania Convention*. No such experiment in constitution making can be carried on without adding to our store of knowledge of the science of politics, and without producing some genuine classics on the subject. The problem of forming a Constitution was difficult enough, but the problem of getting it understood by the multitude and accepted by them was an even more serious one. It has always seemed to me that a certain class of modern critics become unduly alarmed at the charge against any piece of political or historical writing that it is "propaganda." When the critics of literature tell us that a novel is propaganda, and imply that it is thereby lessened in their estimation, I have never been able to see why. Unless writing, be it history, science or belles-lettres, is trying to propagate some idea, I am not in the least interested in it. Too often has the "propaganda" of one generation become the classic of the next. In English literature we need only contemplate the writings of Charles Dickens to understand this. So the work of ratifying our Federal Constitution produced a work of propaganda which is a classic. *The Federalist* is itself the frankest, the baldest and boldest propaganda ever penned—but what of it?

Wilson brushed aside the political experience of classical antiquity and of medieval Europe in considering the problem of forming a national government which would reconcile the jealousies of the various groups which composed the United States. More penetrating than Madison, he saw that the Convention

knew far too little of the actual working of the Achaean League or the Lycian Confederacy to draw any conclusions from them. True to his fundamental belief that supreme power rested in the people, and that the formation of any government involved the loss of certain freedom of action that more beneficial things might be gained, he pointed out that certain power, instead of being delegated to state governments, should be more fittingly delegated to the larger political body. It took no genius to point out that the failure to adopt the Federal Constitution might entail anarchy. Wilson said such tedious details disgusted him. What he stressed was the simple constructive idea that by the device of a definite instrument of government which in America we call a "constitution," the people designate what power each governmental agency shall have. By the State Constitution is designated what power the state shall have, and great advantage results from the formation of the State Constitution. By a Federal Constitution should be designated what power the government over large groups shall have, and the time had obviously come when the people of the United States were competent to act in a larger group, simply because the necessities of the case dictated such action.

If a civil government was desirable for a group of people, was it not obvious that a federal government might be desirable for a group of states? Certainly the groups which composed the United States had reached that stage of development. Just as individuals must agree to give up a certain freedom of action if they would enjoy the privileges of living in a civilized community—so communities must agree to surrender a certain amount of their liberty of action if they would have the advantages which they desire as members of a larger national state. James Wilson did not mince words—"When a confederate republick is instituted, the communities of which it is composed surrender a part of their political independence, which they before enjoyed as states."

Several years later in his *Law Lectures*, Wilson gave the logical basis for the federalism of which he was such a staunch exponent. It is now no less than a sober fact of history that "the people of the United States must be considered attentively in two very different views—as forming one nation, great and united; and as forming, at the same time, a number of separate states, to that nation subordinate, but independent in their own interior governments."

IV. A DEFINITION OF LAW

Wilson's writings during the troublous times of the Revolution and the period of the formation of the Federal Constitution laid an excellent foundation for a serious study of jurisprudence, and fortunately, the opportunity arose which forced him to continue his studies and set down his findings in an orderly, systematic and permanent form. After he had become a member of the first Supreme Court of the United States, he was called upon in the year 1790 to deliver the first course of lectures founding the first Law School at any university in America. He was appointed Professor of Law at the College of Philadelphia (now the University of Pennsylvania) and opened his course in the presence of President Washington and the other members of the "Republican Court."

These lectures have been available for students of law for more than one hundred years and have been read and reprinted. In selecting certain of them for presentation in this volume, the effort has been made to use only those which seem to pertain to the subject of political science and jurisprudence, omitting those which deal with the more practical subjects such as crimes, torts, property and civil procedure.⁷

One can do little better than think on Wilson's own advice

⁷ Some of what follows has been rewritten from my *Political Ideas of the American Revolution*.

and consider that "law should be studied and taught as a historical science." "Were I called upon," the lecturer remarked, "for my reasons why I deem so highly the American character, I would assign them in a very few words—that character has been eminently distinguished by the love of liberty and the love of law." Blackstone, we remember, in opening his celebrated lectures at Oxford had said that the "laws and constitution were a species of knowledge, in which the gentlemen of England have been more remarkably deficient than those of all Europe besides." Both statements must be taken *cum grano salis*, but one cannot steep himself in the eighteenth century without coming to the conclusion that Wilson was not overstating his case and that perhaps Blackstone knew what he was talking about.

For surely, it was true that one of the principles of the political thought of the American Revolution was this, that the freedom and liberty which the colonists sought would be worse than slavery but for the limitations of law. "Without liberty law loses its nature and becomes oppression. Without law, liberty also loses its nature and its name and becomes licentiousness." Carefully documented accounts of the Revolution in terms of the Acts of Navigation, or commercial competition cannot but distract our attention from the sound political thinking in which the fathers of the republic indulged on occasion.

The men who were the product of the intellectual ancestry such as Wilson's, understood the interrelationship of law and liberty and they conceived of liberty as freedom according to law. They threw off the yoke of England, not as law-breakers but as preservers of the law. What they wanted was liberty under the limitations prescribed by the British Constitution. They were being persecuted by the real law breakers, for such was the Parliament which had violated that Constitution. "Have not British subjects, then, a right to resist such force, force acting without authority, force employed contrary to law, force employed to destroy the very existence of law and of liberty?"

They have, sir, and this right is secured to them both by the letter and the spirit of the British Constitution, by which the measures and the conditions of their obedience are appointed. The British liberties, sir, and the means and right of defending them, are not the grants of princes; and of what our princes never granted they surely can never deprive us." It seems to be the peculiarity of an Anglo-American revolution that it is conducted, not so much for completely overturning the old order and making a new lot of laws, but rather for the sake of getting the benefit of those rights which the old laws assured anyway, but which the particular government is withholding. That is a fact which should never be obscured in trying to get at the conception of law in the period of the American Revolution. Law was not merely some convenient rule, which might be adopted one day and rejected the next at the whim of some *assemblée nationale* or *soviet*. Law was something a good deal more fundamental than that.

But in dealing with any eighteenth century thinker, we must bear in mind the part played in the thinking of that period by what was called the "Law of Nature." It would be a waste of time to try to restate what Sir Frederick Pollock has so admirably and succinctly said of this:

"Political Justice is divided, according to Aristotle, into natural (*naturale*) and conventional (*legale*.) The Latin equivalents are from the current medieval translation directed by St. Thomas Aquinas. The rules of natural justice are those which all civilised men recognise. Those of conventional justice deal with matters indifferent in themselves, or otherwise capable only of being settled only by positive authority. Natural justice may tell me not to drive recklessly, but cannot tell me which is the right side of the road, a question which conventional justice answers one way in these kingdoms and the other in America, and most, though not all, European Continental countries."⁸

⁸ I am indebted to Professor J. S. Reeves for calling my attention to

Now James Wilson divided all law into two general groups, 1st, Divine Law, and 2nd, Human Law. Of Divine Law only a part concerned the political scientist. With those sections which he denominated the law eternal and the law celestial and the laws by which the irrational and inanimate parts of the creation are governed, Wilson alleged the political scientist had nothing to do. But the rule of right reason communicated by conscience and the moral sense, many a good eighteenth century thinker claimed as a part of his stock in trade. *That* was the "Law of Nature" which concerned the political scientist. But entirely apart from this Wilson recognized the existence of human laws, the laws which told Sir Frederick Pollock which side of the road to drive on, and which did not owe their existence to or derive their authority from a divine source. It is those laws to which, naturally, most of his political and legal writings are devoted, and which enable him to state his definition of law with such admirable clarity.

As we shall see in a moment, Wilson's own concept of international law was inextricably bound up with the "Law of Nature" idea. But it has often occurred to me that one of the great contributions he made to international law was a definition of law which will elucidate many of the problems of modern international law. Is it law if it is not obeyed? The view that law is a command given by a superior to an inferior which the inferior must obey upon the pain of some sanction is an easy thing to understand. But it leaves no room for international law.

"Law is a rule of action" had said Blackstone, "and it is that rule of action which is prescribed by some superior and which the inferior is bound to obey." At this point the new professor of law in the new American University took issue with the Vinerian professor. "A superior! Can there be no law without a superior? Is it essential to law that inferiority should be in-

this paragraph which appears in a note Pollock appended to chapter III of his edition of Maine's *Ancient Law*.

volved in the obligation to obey it?" For Blackstone has exhibited just that confusion of natural and human laws which Wilson was at pains to differentiate. Certainly, there were natural laws, which presumed the existence of a superior, God, but to confuse these with human laws was to presume that God had some temporal deputy on earth to whom he had confided the power of enunciating his law. This was in essence that divine right of kings which the revolutionary thought of both England and America had overthrown. Such a conception of law as Blackstone prescribed was the essential element of "a prerogative impiously attempted to be established—of princes arbitrary to rule; and of a corresponding obligation—a servitude tyrannically attempted to be imposed—on the people implicitly to obey." It was the introduction of superiority as a necessary part of the definition of law to which Wilson objected. The idea itself is as old as Rome and as tyrannous as Caesar. "Indeed on the principle of superiority, Caligula's reasoning was concise and conclusive, 'If I am only a man, my subjects are something less; if they are men, then I am something more.'" Such would be the logical and necessary conclusion of attributing to a superior the authorship of human laws. Could such a conclusion ever be brought into line with the American political principles as set forth in the American constitutional documents? Once the element of superiority and inferiority was introduced the element of the equality of man was lost.

This proposition arouses at once the question, what about the state? Did not, or would not he admit that the state was superior to the individual? The question is a difficult one to answer, for Wilson's utterances do not at first glance seem to be altogether consistent in this matter. But a little reflective reading seems to make the matter not such a difficult one after all. In the first place the eighteenth century never lost sight of the fact that political machinery existed for men, and not men for political machinery. Hence, when he personified the state, it was

as a figure of speech, rather than as an act of awesome deification. Its dependence on the people which composed it was an essential element of the state. "In free states," says Wilson, "the people form an artificial person or body politic, the highest and noblest that can be known." In that definition the eighteenth century would have emphasized the words "people" and "artificial" in a way in which one might not emphasize them today unless his attention was especially directed to it. The "moral person" which was thus constituted was described "as a complete body of free natural persons, united together for their common benefit; as having an understanding and a will; as deliberating, resolving and acting; as possessed of interests which it ought to manage; as enjoying rights which it ought to maintain, as lying under obligations which it ought to perform. To this moral person, we assign by way of eminence, the dignified appellation of 'state.'" In discussing the rights and duties of a state he observed "that it is its right and generally its duty to form a constitution, and to institute civil government and to establish laws."

To have asked James Wilson whether or not he regarded the state as superior to the individual, would probably have elicited the reply that such a question betrayed an unfamiliarity with the true nature of law. A state was merely an aggregate of people, which expressed its will in the law of the constitution, which in turn formed a government. To endow a state with a metaphysical or a spiritual nature, to grant it an existence above or apart from the people, was totally to misunderstand the thought of the Revolutionary period in America. Nowhere does this come out more clearly than in Wilson's discussion of sovereignty: the sovereignty of the state was not a term in which he thought; the sovereignty of the people was all he understood.

Now, if the element of superiority were permitted to remain in the definition of human law, mankind would be compelled to

answer the question as to whether this was a superiority of force or of excellence, by which the superior claimed his right to impose his will upon the inferior. The former is exactly what Anglo-American revolutions were fought to avoid, and it is easily disposed of. "For us, as men, as citizens, as states," it is sufficient to say that power is nothing more than the right of the strongest, and may be opposed by the same right, the same means and the same principles which are employed to establish it. "Bare force, far from producing any obligation to obey, produces an obligation to resist." On the other hand if the superiority be based upon excellence, if the superior claim any superiority by virtue of his being more wise, who will take upon himself to make such a judgment? To speak of superiors, involves the implication that there are inferiors; is government consciously to take cognizance of the inequalities of men? If so, what is the standard? "Is this a foundation sufficient for supporting the solid and durable superstructure of law?"

Wilson's knowledge of comparative governments was necessarily more limited than would be the case today, yet it is remarkable how carefully he selects the illustrations with which his points are elucidated. The classic references abound, of course; he would not have been a true representative of the eighteenth century if they did not. But his reading in the political scientists of all nations was extensive; not merely among the English and French writers, but among other Continental writers of his day as well. Yet he never forgets the essential distinction which makes his work of such practical value, namely the separation of the idea of the law which God makes and the idea of the law which man makes; for, although in the case of the former he would not deny the existence of a superior, yet in the latter he would do so, and manifests therein the germ of what is distinctively American in political science—government by the consent of the governed. "Let it be remembered all along, that I am examining the doctrine of su-

periority as applied to human laws, the proper and immediate object of investigation in these lectures. Of the law that is divine, we shall have occasion at another time to speak, with the reverence and gratitude that becomes us." In consideration of this clear distinction since the alleged superior cannot rest his title on any inherent qualities as goodness or force, from what source can such superiority be derived? Divine source is ruled out by reason of the fact that it involves not human, but divine laws; and, if the two be confused, it being even more ruled out because it involves the divine right of kings, what source remains? "How is this superior constituted by human authority?"

Is the superior constituted by law? If he is, then the power which constituted that law is his superior, and we are confronted by the same question as before. So the will of a superior is discarded as an improper principle of obligation in human laws. It will stand the test of neither reason nor experience; it contains the germ of tyranny, and it provokes the alleged inferiors to resistance and revolt. The idea of law as a policeman's club is just the idea which Wilson would have his students avoid. However it might represent the law and the idea of law in foreign lands, it was not the Anglo-American idea as he understood it. Not that he was an advocate of pure moral suasion; far from it. He simply believed that that force which is the sanction of law was not the exclusive property of the alleged superior to do with it as he chose. The superior which existed for convenience's sake in administration, exercised whatever force he did only at the bidding of the alleged inferior, by whose consent he exercised also his temporary superiority.

Thus it is, that when asked what in his view was the essential element of law which he would substitute for the idea of a superior with a sanction, he states unequivocally "In its place I introduce the consent of those whose obedience the law requires. This I conceive to be the true origin of the obligation of hu-

man laws." Customs were the first laws known to men ; certain conventional habits of actions which mankind observed simply by reason of the necessary requirements of peaceful human intercourse. Customary law was rudimentary law, and when the conventional types of action crystallized into rules enforceable in courts of law, the evolution of law might be said to have reached its latest stage.⁹ Customary law was not the dictate of a superior to an inferior. It was introduced by voluntary adoption, and became general by the simple process of instances of that voluntary adoption being multiplied. It became lasting by satisfactory experience, which ratified and confirmed what voluntary experience had adopted and introduced. "In the introduction, in the extension, in the continuance of customary law, we find the operations of consent universally predominant." In the regulations of justice and government, customs have been more effectual than the best of written laws. This view was in his estimation the only view that could be held by the eighteenth century lawyer. "Let us mention in one word, everything that can enforce my sentiments: the common law of England is customary law." One need go no farther to understand what Wilson conceived to be the essential nature, origin, and source of the obligation of law. Here was not necessarily any elaborate fiction of social contract or any discussion of the rights which mankind retained over and above what the limitations of the law took away from him. The simple distinction here made between common and statute law was no ultimate distinction in origin or obligation. The law which was produced by the enactment of legislative assemblies derived its obligatory force only from that same consent, given less formally, but none the less effectively, in the formation of the customary law. "Where is the difference whether the people declare their will by their suffrage or by their conduct." For "customs for a long time were the only

⁹ See Pollock and Maitland's interesting discussion of "lex" and "consuetudo" in *History of the English Law*. I, 154.

laws known among men" and "custom is, of itself, intrinsic evidence of consent." In the Anglo-American legal system Wilson could not regard statutory enactment as the only, or even the principal, species of law. That English Common Law, "founded on long and general custom," which in turn can be founded on nothing but free and general consent, is the principal connotation which the word "law" had for him. To him the eighteenth century nomenclature was not his master, but his servant. Certainly he would admit of "compact," "contract," "covenant," "bargain" and whatnot; "let them be called covenants, or bargains, or stipulations and anything similar to any of those, still I am satisfied, for still everything mentioned, and everything similar to everything mentioned, imports consent. Here history and law combine their evidence in support of consent." This theory of the nature of law, Wilson regarded as quite different from those of Blackstone, whom he thought followed rather after Hobbes and Puffendorf. His own thought he traces back rather through Vattel and Locke. It might also be traced through Hooker, whom Wilson read—back to Thomas Aquinas.

If one would understand James Wilson's place in the history of jurisprudence, it is not so much the comparison with Blackstone which elucidates his theories as it is the comparison with another English legal writer, of whom he probably never heard, as John Austin was born in the year in which Wilson began to lecture. James Wilson's legal theories were the product of many years study of the writers of many nations; but that studying was done in the intellectual atmosphere of the American Revolution in Philadelphia, where Wilson lived for many years. John Austin studied at the Inns, yet one cannot but feel that his jurisprudence was colored by those years spent studying in Germany in the intellectual atmosphere of the reaction after the Napoleonic Wars. At any rate, his doctrines furnish the antithesis which brings out the Wilson doctrine by contrast. To

Austin, as to Blackstone, a law was a command "which proceeds from superiors and obliges inferiors." Yet he is more explicit and emphatic than Sir William. "The term superiority signifies might; the power of affecting others with evil or pain, of forcing them through fear of that evil to fashion their conduct to one's wishes." "In short, whoever can oblige another to comply with his wishes, is the superior of that other, so far as his ability reaches; the party who is obnoxious to the impending evil being, to that same extent, the inferior."¹⁰ Such was Austin's theory of positive law. Of course international law has no place by definition, for international law is customary law, *par excellence*. It is the idea of law from above, the obligation to obey which comes from the fear of a superior force, rather than the idea of a set of rules which men have agreed to observe and which derive their obligations from the consent of those men. As to which is the higher sense of law, is a question of demonstration.

We are, perhaps, now, as never before, in a position to take historical cognizance of the effect of this distinction. The German has been accustomed to regard the American as a rather lawless person, a conclusion only heightened by the American's disregard for signs bearing the magic word "Verboten." The American has learned to regard the German as an unfair player, one who disregards the rules of the game, who hits below the belt. The one obeys commands; the other observes rules. The one derives his sense of obligation through a sense of fear; the other through a sense of fair-play. The one is the product of discipline, the other of sportsmanship. Possibly, one may even go so far as to say that the one is concerned with the letter, and the other with the spirit of the law. At any rate it is easy to see

¹⁰ John Austin: *Lectures on Jurisprudence*, 3rd ed. (1869) I. The first lecture contains some interesting definitions, esp. 88-89. One of the clearest criticisms of Austin in more recent thought can be found in Paul Vinogradoff's book, *Common Sense in Law*—Chapter II.

which is the product of the Austinian and which of the Wilsonian point of view.

But if Wilson's legal theories give us the proper legally philosophical formula by which international law can be elevated to a more respectful place in the science of jurisprudence, that was quite an incidental consideration on his part. When he comes to that subject itself there is another contribution of another sort. The course of lectures, which includes everything from legal philosophy to torts and crimes, brings the eighteenth century law students, in the fourth session, to the "Law of Nations." Once more there is the clear cut distinction between those laws of nations which take their origin in the "Law of Nature," and those laws of nations which find their origin in consent. Wilson's contributions to what he would call "the voluntary law of nations," or what we know as "international law" as opposed to "international morality," are scant indeed in this chapter, because he is still dealing with the "Law of Nature." He criticizes Grotius freely for applying so rigorously that rule of consent which he himself emphasized when dealing with law in the abstract. He is frankly more interested in international morality and expresses opinions which take the form of pious expressions of hope, rather than statements of practice. Should any of his students have dropped out at the close of this lecture, they would indeed have gotten little from this professor's exposition of the subject of international law. It is true that Wilson did touch the deeper questions of this field, for to say "he who has made a promise to another has given that other a perfect right to demand the performance of the promise," is a statement which is hardly Machiavellian. On the obligations of treaties he is as explicit as any writer before or since: "Nations and the representatives of nations ought therefore to preserve inviolably their treaties and engagements: by not preserving them, they subject themselves to all the consequences of violating the perfect right of those to whom they were made. . . . In public as in private

life, among sovereigns as among individuals, honesty is the best policy, as well as the soundest morality. Among merchants, credit is wealth; among states and princes, good faith is both respectability and power." But the trouble with such pronouncements, then as now, was that such principles were rarely denied in theory, while flagrantly violated in practice, a fact which makes Wilson's conception of the nature of law the more important.

V. AN INTERNATIONAL COURT

But fortunately he does not stop here. The ninth lecture of the series bears the interesting title "Of Man as a Member of the Great Commonwealth of Nations." Here his reading of Grotius comes clearly to the front. He conceives the nations of the world as dwelling together in that natural society, that "state of nature," which the compact theorist assured him had existed prior to government. For a state to make a figure in the great society of nations, it is sufficient that it be independent, i. e., "that it govern itself by its own authority." But to secure justice in "the great society, equality is the basis and the rule. To this equality, the inferiority of subjection and the superiority of command are alike, repugnant. This equality of nations is the great and general foundation of national rights. In this matter no regard is had for names." All were alike before the law of nations, whether empires, kingdoms, commonwealths or free towns. The abstract admission of this legal principle is of little value unless some machinery be provided for its administration, and consequently one inquires, how this right is to be secured in a world where war still exists, where "among nations, as well as among individuals, differences and causes of differences will sometimes unavoidably arise." Since above independent nations no coercive authority exists to which recourse may be had for a decision of the controversies, there are several successive steps

which should be taken. Controversies often happen in which neither party is intentionally wrong, where mere misapprehensions and mistakes are the cause of the friction. In such cases nothing more is necessary for amicable accommodation than candid conference and mutual explanation. Such is the simple method of bilateral diplomatic negotiation.

But "if the parties themselves, notwithstanding their peaceful and proper inclinations, cannot finally agree upon the terms, according to which the difference should be adjusted, those terms may, in many instances, be arranged and settled by the kind and benevolent mediation of a common friend," who should remember that his office is to conciliate and not to judge. But if neither friendly negotiation nor the benevolent mediation of a third power will avail, there is yet another method "by which mutual irritation and much more dreadful extremities may be prevented between those who have no common judge on earth to whom they can appeal. This method is to refer the matter in dispute to an award of arbitrators." If arbitration fail the next alternative is the summoning of an international congress "in which the differences of contending parties might be determined by those altogether disinterested in them; and in which, likewise some effectual means might be devised and carried into execution, for compelling nations at war to conclude a peace upon fair and equitable conditions." But as Wilson wrote this twenty-five years before even the very deficient Congress of Vienna, he had little historical data with which to elaborate this point. The congresses of the eighteenth century called for such purposes "were nothing more than pompous farces, acted with great parade, by those who wished to appear solicitous for accommodation, but who in fact were little solicitous to promote it." Beyond these methods of international conciliation he knew of nothing which legal practice would suggest other than reprisals which would be in most cases merely the stepping stone to war. So much for the law of nations as he knew it.

It will be observed that all these methods depend for solution on the existence of rules of law to which the negotiators and arbitrators may appeal, yet they are not rules or commands given by a superior to an inferior, because in international affairs there is no superior.

But Wilson was too good a political scientist to stop there. "All the modes of adjustment which have hitherto been mentioned presuppose the reconciliation of irritated minds" is the way in which he introduced his own theory of solving the problems of war. "But must the peaceful adjustment of controversies between states, and adjustment so salutary and so necessary to the human race, depend on events so precarious or so very improbable? Must the alternatives in disputes and differences between dignified assemblages of men, known by the name of nations, be the same which are the prerogative of savages in the rudest and most deformed state of society—voluntary accommodation or open war, or violent reprisals, inferior in odium only to war? Individuals unite in civil society and institute judges with authority to decide, and with authority also to carry their decisions into full and adequate execution that justice may be done and war may be prevented. Are states too wise or too proud to receive a lesson from individuals? Is the idea of a common judge between nations less admissible than that of a common judge between men? If admissible in idea, would it not be desirable to try whether the idea may not be reduced to practice? To return to the original question—has or has not our national constitution given us an opportunity of making this great and interesting trial?"

In a word, Wilson was struck with the idea which has occurred to many men since his day, that the United States Supreme Court was in effect an international tribunal for the settlement of disputes between states. As a matter of fact, that is just the function that the Supreme Court has frequently exercised, administering international law, and being guided in

its decisions by the principles of that law. It was obvious to Wilson in the second year of the Supreme Court's existence that being authorized to take jurisdiction in cases between states claiming to be sovereign, it would form an interesting object of study for comparative jurisprudence as an example of an international court. As a product of the English Common Law system, Wilson could not but be impressed with the latent possibilities of such a court, proceeding along lines analogous to those of the English Common Law Courts, administering a customary international law, which was akin to the customary common law, and in certain sense even a part of it. Hitherto international law "has been applied and administered by the force or at the pleasure of the parties in controversy: in the United States it can now be applied and administered by impartial, independent and efficient though peaceful authority," in such cases as come within its jurisdiction. To Wilson's imagination this idea opened up a magnificent prospect of the government of law, and of international peace based upon the existence of a court for the judicial settlement of international disputes. His dream of world peace was not so much in terms of a super-state as it was in terms of a super-court.

It is probably superfluous now to point out that the effectiveness of such a court would depend entirely upon the sense of law possessed by those who submit their cases to it. If the litigants in such a controversy felt that the law thus administered was merely the dictate of a superior, and if the actions of the court were such as to justify that opinion, such a court would have little value. If on the other hand the litigants possessed the spirit of fair play and a willingness to abide by rules because of their personal interest in the making of those rules, and if the courts were actuated by a like motive, Wilson's dream was not a vain thing. But the whole question depends upon the acceptance of his original and fundamental legal theories.

Certainly not the least significant thing about James Wilson's

political thinking, was his ability to see with a vision which got beyond states and nations. That he may have been influenced by Grotius, as possibly Grotius was influenced by Suarez, may be true. One could go back of Suarez for that matter. All that is here attempted is to demonstrate that the present day striving for political and legal internationalism is no new thing in America. Far from betraying the faith of the Fathers—it *is* the faith of one of the most intelligent and respected of the Fathers of the Republic.

CONSIDERATIONS ON THE NATURE AND EXTENT OF
THE LEGISLATIVE AUTHORITY OF THE BRITISH
PARLIAMENT

(The text in the main follows that of No. 16 of the Bibliography. It has however, been collated with that given in No. 1 of the Bibliography and the variations of the latter occasionally introduced.)

ADVERTISEMENT

The following sheets were written during the late non-importation agreement: but that agreement being dissolved before they were ready for the press, it was then judged unseasonable to publish them. Many will, perhaps, be surprised to see the legislative authority of the British parliament over the colonies denied *in every instance*. Those the writer informs, that, when he began this piece, he would probably have been surprised at such an opinion himself; for that it was the *result*, and not the *occasion*, of his disquisitions. He entered upon them with a view and expectation of being able to trace some constitutional line between those cases in which we ought, and those in which we ought not, to acknowledge the power of parliament over us. In the prosecution of his inquiries, he became fully convinced that such a line does not exist; and that there can be no medium between acknowledging and denying that power in *all* cases. Which of these two alternatives is most consistent with law, with the principles of liberty, and with the happiness of the colonies, let the public determine. To them the writer submits his sentiments, with that respectful deference to their judgment, which, in all questions affecting them, every individual should pay.

August 17th, 1774.

ON THE LEGISLATIVE AUTHORITY OF THE BRITISH PARLIAMENT

No question can be more important to Great Britain, and to the colonies, than this—does the legislative authority of the British parliament extend over them?

On the resolution of this question, and on the measures which a resolution of it will direct, it will depend, whether the Parent Country, like a happy Mother, shall behold her Children flourishing around her, and receive the most grateful returns for her protection and love; or whether, like a step-dame, rendered miserable by her own unkind conduct, she shall see their affections alienated, and herself deprived of those advantages which a milder treatment would have ensured to her.

The British nation are generous: they love to enjoy freedom: they love to behold it: Slavery is their greatest abhorrence. Is it possible, then, that they would wish themselves the authors of it? No. Oppression is not a plant of the British soil; and the late severe proceedings against the Colonies must have arisen from the detestable schemes of interested Ministers, who have misinformed and misled the people. A regard for that nation, from whom we have sprung, and from whom we boast to have derived the spirit which prompts us to oppose their unfriendly measures, must lead us to put this construction on what we have lately seen and experienced. When therefore, they shall know and consider the justice of our claim—that we insist only upon being treated as Freemen, and as the Descendants of those British ancestors, whose memory we will not dishonour by our degeneracy, it is reasonable to hope, that they will approve of

our conduct, and bestow their loudest applauses on our congenial ardour for liberty.

But if these reasonable and joyful hopes should fatally be disappointed, it will afford us at least some satisfaction to know, that the principles on which we have founded our opposition to the late acts of parliament, are the principles of justice and freedom, and of the British constitution. If our righteous struggle shall be attended with misfortunes, we will reflect with exultation on the noble cause of them; and while suffering unmerited distress, think ourselves superior to the proudest slaves. On the contrary, if we shall be re-instated in the enjoyment of those rights, to which we are entitled by the supreme and [un]controulable laws of nature, and the fundamental principles of the British constitution, we shall reap the glorious fruit of our labors; and we shall, at the same time, give to the world and to posterity an instructive example, that the cause of liberty ought not to be despaired of, and that a generous contention in that cause is not always unattended with success.

The foregoing Considerations have induced me to publish a few remarks on the important question, with which I introduced this Essay.

Those who allege that the Parliament of Great Britain have power to make laws binding the American colonies, reason in the following manner. "That there is and must be in every state a supreme, irresistible, absolute, uncontrouled authority, in which the *jura summi imperii*, or the rights of sovereignty, reside":¹ "That this supreme power is, by the Constitution of Great Britain, vested in the King, Lords, and Commons":² "That, therefore, the Acts of the King, Lords, and Commons, or, in other words, Acts of Parliament, have, by the British Constitution, a binding Force on the American Colonies, they composing a part of the British Empire."

¹ 4 Bl. Com. 48, 49.

² Id. 50, 51.

I admit that the principle, on which this argument is founded, is of great importance: Its importance, however, is derived from its tendency to promote the ultimate end of all government. But if the application of it would, in any instance, destroy, instead of promoting, that end, it ought, in that instance, to be rejected: For to admit it, would be to sacrifice the end to the means, which are valuable only so far as they advance it.

All men are, by nature, equal and free: No one has a right to any authority over another without his consent: all lawful government is founded on the consent of those who are subject to it: Such consent was given with a view to ensure and to encrease the happiness of the governed, above what they could enjoy in an independant and unconnected state of nature. The consequence is, that the happiness of the society is the *first* law of every government.³

This rule is founded on the law of nature: It must control every political maxim: it must regulate the Legislature itself.⁴ The people have a right to insist that this rule be observed; and are entitled to demand a moral security that the Legislature will observe it. If they have not the first, they are slaves; if they have not the second, they are, every moment, exposed to slavery. For "civil liberty is nothing else but natural liberty, divested of that part which constituted the independance of individuals, by the authority which it confers on sovereigns, attended with a right of insisting upon their making a good use of their authority, and with a moral security that this right will have its effect."⁵

Let me now be permitted to ask—Will it ensure and encrease the happiness of the American Colonies, that the Parliament of

³ The right of sovereignty is that of commanding finally—but in order to procure real felicity; for if this end is not obtained, sovereignty ceases to be a legitimate authority. 2 Burl. 32, 33.

⁴ The law of nature is superior in obligation to any other. 1 Bl. Com. 41.

⁵ 2 Burl. 19.

Great-Britain should possess a supreme irresistible, uncontrolled authority over them? Is such an authority consistent with their liberty? Have they any security that it will be employed only for their good? Such a security is absolutely necessary. Parliaments are not infallible: they are not always just. The members, of whom they are composed, are human; and, therefore, they may err; they are influenced by interest; and, therefore, they may deviate from their duty. The acts of the body must depend upon the opinions and dispositions of the members: the acts of the body may, then, be the result of error and of vice. It is no breach of decency to suppose all this; the British constitution supposes it: "it supposes that parliaments may betray their trust, and provides, as far as human wisdom can provide, that they may not be able to do so long, without a sufficient control." Without provisions for this purpose, the temple of British liberty, like a structure of ice, would instantly dissolve before the fire of oppression and despotic sway.⁶

It will be very material to consider the several securities, which the inhabitants of Great-Britain have, that their liberty will not be destroyed by the legislature, in whose hands it is intrusted. If it shall appear, that the same securities are not enjoyed by the Colonists; the undeniable consequence will be, that the Colonists are not under the same obligations to intrust their liberties into the hands of the same legislature; for the Colonists are entitled to all ⁷ the privileges of Britons. We have committed no crimes to forfeit them: We have too much spirit to resign them. We will leave our posterity as free as our ancestors left us.

To give to anything that passeth in parliament the force of a law, the consent of the King, of the Lords, and of the Com-

⁶ Bol. Diss. on Part. I. 11, 12, p. 167, 179.

⁷ As the law is the birthright of every subject, so wheresoever they go, they carry their laws with them. 2 P. Wms. 75.

mons⁸ is absolutely necessary.⁹ If, then, the inhabitants of Great-Britain possess a sufficient restraint upon *any* of these branches of the legislature, their liberty is secure, provided they be not wanting to themselves. Let us take a view of the restraints, which they have upon the *House of Commons*.

They elect the members of that House. "Magistrates," says Montesquieu,¹⁰ "are properly theirs, who have the nomination of them." The members of the House of Commons, therefore, elected by the people, are the magistrates of the people; and are bound by the ties of gratitude for the honor and confidence conferred upon them, to consult the interest of their constituents.

The power of elections has ever been regarded as a point of the last consequence to all¹¹ free governments. The independent exercise of that power is justly deemed the strongest bulwark of the British liberties.¹² As such, it has always been an object of great attention to the legislature; and is expressly stipulated with the Prince in the Bill of Rights. All those are excluded from voting, whose poverty is such, that they cannot live independant, and must therefore be subject to the undue influence of their superiors. Such are supposed to have no will of their own: and it is judged improper that they should vote in the representation of a free state. What can exhibit in a

⁸ 4 Ins. 25.

⁹ The commons of England have a great and considerable right in the government; and a share in the legislature without whom no law passes. 2 Ld. Ray. 950.

¹⁰ Sp. L. b. 2, c. 2.

¹¹ The Athenians, justly jealous of this important privilege, punished, with death, every stranger who presumed to interfere in the assemblies of the people.

¹² The English freedom will be at an end whenever the court invades the free election of parliament. Rapin.

A right that a man has to give his vote at the election of a person to represent him in parliament, there to concur to the making of laws, which are to bind his liberty and property, is a most transcendent thing and of a high nature. 2 Lord Raymond's Reports 953.

more striking point of view, the peculiar care which has been taken, in order to render the election of members of parliament entirely free? It was deemed an insult upon the independant Commons of England, that their uninfluenced suffrages should be adulterated by those who were not at liberty to speak as they thought, though their interests and inclinations were the same. British liberty, it was thought, could not be effectually secured, unless those who made the laws were freely, and without influence, elected by those for whom they were made. Upon this principle is reasonably founded the maxim in law—that every one, who is capable of exercising his will, is party, and presumed to consent, to an Act of Parliament.

For the same reason that persons, who live dependant upon the will of others, are not admitted to vote in elections, those who are under age, and therefore incapable of judging; those who are convicted of perjury or subornation of perjury, and therefore unworthy of judging; and those who obtain their freeholds by fraudulent conveyances, and would therefore vote to serve infamous purposes, are all likewise excluded from the enjoyment of this great privilege. Corruption at elections is guarded against by the strictest precautions, and most severe penalties. Every elector, before he polls, must, if demanded by a candidate or by two electors, take the oath against bribery, as prescribed by 2. Geo. 2. c. 24. Officers of the excise, of the customs, and of the post offices; officers concerned in the duties upon leather, soap, paper, striped linens imported, hackney coaches, cards and dice, are restrained from interfering in elections, under the penalty of one hundred pounds, and of being incapable of ever exercising any office of trust under the King.

Thus is the freedom of elections secured from the *servility*, the *ignorance*, and the *corruption* of the electors; and from the interpositions of officers depending immediately upon the Crown. But this is not all. Provisions, equally salutary, have been made concerning the qualifications of those who shall be elected.

All imaginable care has been taken, that the Commons of Great-Britain may be neither awed, nor *allured*, nor *deceived* into any nomination inconsistent with their liberties.

It has been adopted as a general maxim, that the Crown will take advantage of every opportunity of extending its prerogative, in opposition to the privileges of the people; that it is the interest of those who have *pensions* or *offices at will* from the Crown, to concur in all its measures; that mankind in general will prefer their private interest to the good of their country; and that, consequently, those who enjoy such pensions or offices are unfit to represent a free nation, and to have the care of their liberties committed to their hands.¹³ All such officers or pensioners are declared incapable of being elected Members of the House of Commons.

But these are not the only checks which the Commons of Great Britain have, upon the conduct of those whom they elect to represent them in Parliament. The interest of the Representatives is the same with that of their constituents. Every measure, that is prejudicial to the nation, must be prejudicial to them and their posterity. They cannot betray their electors, without, at the same time, injuring themselves. They must join in bearing the burthen of every oppressive act; and participate in the happy effects of every wise and good law. Influenced by these considerations, they will seriously and with attention examine every measure proposed to them; they will behold it in every light, and extend their views to its most distant consequences. If, after the most mature deliberation, they find it will be conducive to the welfare of their country, they will support it with ardour: If, on the contrary, it appears to be of a dangerous and destructive nature, they will oppose it with firmness.

Every social and generous affection concurs with their interest, in animating the representatives of the Commons of Great-Britain to an honest and faithful discharge of their important

¹³ There are a few exceptions in the case of officers at will.

trust. In each patriotic effort, the heartfelt satisfaction of having acted a worthy part vibrates in delightful unison with the applause of their countrymen, who never fail to express their warmest acknowledgements to the friends and benefactors of their country. How pleasing are those rewards! How much to be preferred to that paltry wealth, which is sometimes procured by meanness and treachery! I say *sometimes*; for meanness and treachery do not always obtain *that* pitiful reward. The most useful ministers to the crown, and therefore the most likely to be employed, especially in great emergencies, are those who are best beloved by the people; and those only are beloved by the people, who act steadily and uniformly in support of their liberties. Patriots, therefore, have frequently, and especially upon important occasions, the best chance of being advanced to offices of profit and power. An abject compliance with the will of an imperious Prince, and a ready disposition to sacrifice every duty to his pleasure, are sometimes, I confess, the steps, by which only men can expect to rise to wealth and titles. Let us suppose that, in this manner, they are successful in attaining them. Is the despicable prize a sufficient recompence, for submitting to the infamous means by which it was procured, and for the torturing remorse with which the possession of it must be accompanied? Will it compensate for the merited curses of the nation and of posterity?

These must be very strong checks upon the conduct of every man, who is not utterly lost to all sense of praise and blame. Few will expose themselves to the *just* abhorrence of those among whom they live, and to the excruciating sensations which such abhorrence must produce.

But lest all these motives, powerful as they are, should be insufficient to animate the representatives of the nation to a vigorous and upright discharge of their duty, and to restrain them from yielding to any temptation that would incite them to betray their trust; their constituents have still a farther security for

their liberties in the frequent election of Parliaments. At the expiration of every Parliament, the people can make a distinction between those who have served them well, and those who have neglected or betrayed their interest: they can bestow, unasked, their suffrages upon the former in the new election; and can mark the latter with disgrace, by a mortifying refusal. The constitution is thus frequently renewed, and drawn back, as it were, to its first principles; which is the most effectual method of perpetuating the liberties of a state. The people have numerous opportunities of displaying their just importance, and of exercising, in person, these natural rights. The representatives are reminded whose creatures they are; and to whom they are accountable for the use of that power, which is delegated unto them. The first maxims of jurisprudence are ever kept in view—THAT ALL POWER IS DERIVED FROM THE PEOPLE—THAT THEIR HAPPINESS IS THE END OF GOVERNMENT.

Frequent new Parliaments are a part of the British constitution: By them only, the King can know the immediate sense of the nation. Every supply, which they grant, is justly to be considered as a testimony of the loyalty and affection, which the nation bear to their Sovereign; and by this means, a mutual confidence is created between the King and his subjects. How pleasing must such an intercourse of benefits be! How must a father of his people rejoice in such dutiful returns for his paternal care! With what ardour must his people embrace every opportunity of giving such convincing proofs, that they are not insensible of his wise and indulgent rule!

Long parliaments have always been prejudicial to the Prince, who summoned them, or to the people, who elected them. In that called by King Charles I., in the year 1640, the Commons proceeded at first, with vigour and a true patriotic spirit, to rescue the kingdom from the oppression under which it then groaned—to retrieve the liberties of the people, and establish them on the surest foundations—and to remove or prevent the pernicious

consequences, which had arisen, or which, they dreaded, might arise from the tyrannical exercise of prerogative. They abolished the courts of the star chamber and high commission: They reduced the forrests to their antient bounds: They repealed the oppressive statutes concerning knighthood: They declared the tax of ship money to be illegal: They presented the petition of rights, and obtained a ratification of it from the crown. But when the King unadvisedly passed an Act to continue them till such time as they should please to dissolve themselves, how soon—how fatally did their conduct change! In what misery did they involve their country! Those very men, who, while they had only a constitutional power, seemed to have no other aim but to secure and improve the liberty and felicity of their constituents, and to render their Sovereign the glorious ruler of a free and happy people—those very men, after they became independant of the King and of their electors, sacrificed both to that inordinate power which had been given them. A regard for the public was now no longer the spring of their actions: their only view was to aggrandize themselves, and to establish their grandeur on the ruins of their country. Their views unhappily were accomplished. They overturned the constitution from its very foundations; and converted into rods of oppression those instruments of power, which had been put into their hands for the welfare of the state: but which those, who had formerly given them, could not now re-assume. What an instructive example is this! How alarming to those, who have no influence over their legislators—who have no security but that the power, which was originally derived from the people, and was delegated for their preservation, may be abused for their destruction! Kings are not the only tyrants: the conduct of the long Parliament will justify me in adding, that Kings are not the severest tyrants.

At the Restoration, care was taken to reduce the House of Commons to a proper dependance on the King; but immediately after their election, they lost all dependance upon their constit-

uents, because they continued during the pleasure of the Crown. The effects soon dreadfully appeared in the long Parliament under Charles the Second. They seemed disposed ingloriously to surrender those liberties, for which their ancestors had planned, and fought, and bled: and it was owing to the wisdom and integrity of two¹⁴ virtuous ministers of the Crown, that the Commons of England were not reduced to a state of slavery and wretchedness by the treachery of their own representatives, whom they had indeed elected, but whom they could not remove. Secure of their seats, while they gratified the Crown, the Members bartered the liberties of the nation for places and pensions; and threw into the scale of prerogative all that weight, which they derive from the people in order to counter-balance it.

It was not till some years after the Revolution, that the people could rely on the faithfulness of their Representatives, or punish their perfidy. By the statute 6 W. & M. c. 2, it was enacted, that Parliaments should not continue longer than *three* years. The insecure situation of the first Prince of the *Hanoverian* line, surrounded with rivals and with enemies, induced the Parliament, soon after his accession to the throne, to prolong this term to that of *seven* years. Attempts have, since that time, been frequently made to reduce the continuance of Parliaments to the former term: And such attempts have always been well received by the nation. Undoubtedly they deserve such reception: For long Parliaments will naturally forget their dependance on the people: when this dependance is forgotten, they will become corrupt: "Whenever they become corrupt, the Constitution of England will lose its liberty—it will perish."¹⁵

¹⁴ The Earls of Clarendon and Southampton.

¹⁵ Mont Sp. L. b. 11, c. 6. If the legislative body were perpetual; or might last for the life of the Prince who convened them, as formerly; and were so to be supplied, by occasionally filling the vacancies with new representatives; in these cases, if it were once corrupted, the evil would be past remedy: but when different bodies succeed each other, if the people see cause to disapprove of the present, they may rectify

Such is the provision made by the Laws of Great-Britain, that the Commons should be faithfully represented: provision is also made, that faithful representatives should not labor for their constituents in vain. The Constitution is formed in such a manner, that the House of Commons are *able* as well as *willing* to protect and defend the liberties intrusted to their care.

The Constitution of Great-Britain is that of limited monarchy; and in all limited monarchies, the power of preserving the limitations must be placed somewhere. During the reigns of the first Norman Princes, this power seems to have resided in the Clergy and in the Barons by turns. But it was lodged very improperly. The Clergy, zealous only for the dignity and pre-eminence of the church, neglected and despised the people, whom, with the soil they tilled, they would willingly have considered as the patrimony of St. Peter. Attached to a foreign jurisdiction, and aspiring at an entire independance of the civil powers, they looked upon the prerogatives of the Crown as so many obstacles in the way of their favorite scheme of supreme ecclesiastical dominion; and therefore seised, with eagerness, every occasion of sacrificing the interests of their sovereign to those of the Pope. Enemies alike to their King and to their country, their sole and unvaried aim was to reduce both to the most abject state of submission and slavery. The means employed by them to accomplish their pernicious purposes were, sometimes, to work upon the superstition of the people, and direct it against the power of the Prince; and, at other times, to work upon the superstition of the Prince, and direct it against the liberties of the people.

The power of preserving the limitations of monarchy, for the purposes of liberty, was not more properly placed in the Barons. Domineering and turbulent, they oppressed their vassals, and

its faults in the next. A legislative Assembly also, which is sure to be separated again, will think themselves bound, in interest as well as duty, to make only such laws as are good. 1 Bl. Com. 189.

treated them as slaves ; they opposed their Prince, and were impatient of every legal restraint. Capricious and inconstant, they sometimes abetted the King in his projects of tyranny ; and, at other times, excited the people to insurrections and tumults. For these reasons, the Constitution was ever fluctuating from one extreme to another ; now despotism—now anarchy prevailed.

But after the representatives of the Commons began to sit in a separate House ; to be considered as a distinct branch of the legislature ; and, as such, to be invested with separate and independant powers and privileges ; then the constitution assumed a very different appearance. Having no interest contrary to that of the people, from among whom they were chosen, and with whom, after the session, they were again to mix, they had no views inconsistent with the liberty of their constituents, and therefore could have no motives to betray it. Sensible that prerogative, or a discretionary power of acting where the laws are silent, is absolutely necessary, and that this prerogative is most properly intrusted to the executor of the laws, they did not oppose the exercise of it, while it was directed towards the accomplishment of its original end : but sensible likewise, that the good of the state was this original end, they resisted, with vigor, every arbitrary measure, repugnant to law, and unsupported by maxims of public freedom or utility.

The checks, which they possessed over prerogative, were calm and gentle—operating with a secret, but effectual force—unlike the impetuous resistance of factious Barons, or the boisterous fulminations of ambitious Prelates.

One of the most ancient maxims of the English law is, That no freeman can be taxed at pleasure.¹⁶ But taxes on freemen were absolutely necessary to defray the extraordinary charges of government. The consent of the freemen was, therefore, of necessity to be obtained. Numerous as they were, they could not

¹⁶ I Bacon's Abridgement of the Law, 568.

assemble to give their consent in their proper persons; and for this reason, it was directed by the constitution, that they should give it by their representatives, chosen by and out of themselves. Hence the indisputable and peculiar privilege of the House of Commons to grant taxes.¹⁷

This is the source of that mild but powerful influence, which the commons of Great-Britain possess over the Crown. In this consists their security, that prerogative, intended for their benefit, will never be exerted for their ruin. By calmly and constitutionally refusing supplies, or by granting them only on certain conditions, they have corrected the extravagancies of some Princes, and have tempered the headstrong nature of others; they have checked the progress of arbitrary power, and have supported with honor to themselves, and with advantage to the nation, the character of grand inquisitors of the realm. The proudest Ministers of the proudest Monarchs have trembled at their censures; and have appeared at the bar of the House, to give an account of their conduct, and ask pardon for their faults. Those Princes, who have favoured Liberty, and thrown themselves upon the affections of their people, have ever found that Liberty which they favoured, and those affections which they cultivated, the firmest foundations of their throne, and the most solid support of their power. The purses of their people have been ever open to supply their exigencies: Their swords have been ever ready to vindicate their honor. On the contrary, those Princes, who, insensible to the glory and advantage of ruling a free people, have preferred to a willing obedience the abject submission of slaves, have ever experienced, that all endeavors to render themselves absolute were but so many steps to their own downfall.

¹⁷ Note. It is said in divers records, "*per communitatem Angliæ nobis concess.*" Because all grants of subsidies or aids by parliament do begin in the house of commons, and first granted by them: also because in effect the whole profit which the king reapeth, doth come from the commons. 4 Ins. 29.

Such is the admirable temperament of the British constitution! such the glorious fabric of Britain's liberty—the pride of her citizens—the envy of her neighbours—planned by her legislators—erected by her patriots—maintained entire by numerous generations past! may it be maintained entire by numerous generations to come!

Can the Americans, who are descended from British ancestors, and inherit *all* their rights, be blamed—can they be blamed BY THEIR BRETHREN IN BRITAIN—for claiming still to enjoy those rights? But can they enjoy them, if they are bound by the Acts of a British Parliament? Upon what principle does the British Parliament found their power? Is it founded on the prerogative of the King? His prerogative does not extend to make laws to bind any of his subjects. Does it reside in the House of Lords? The Peers are a collective, and not a representative body. If it resides anywhere, then, it must reside in the House of Commons.

Should any one object here, that it does not reside in the House of Commons *only*, because that House cannot make laws without the consent of the King and of the Lords; the answer is easy. Though the concurrence of all the branches of the Legislature is necessary to every law; yet the same laws bind different persons for different reasons, and on different principles. The King is bound, because he assented to them. The Lords are bound, because they voted for them. The Representatives of the Commons, for the same reason, bind themselves, and those whom they represent.

If the Americans are bound neither by the assent of the King, nor by the votes of the Lords, to obey Acts of the British Parliament, the *sole* reason why they are bound is, because the representatives of the Commons of Great Britain have given their suffrages in favor of those Acts.¹⁸ But are the Represen-

¹⁸ This is allowed even by the advocates for parliamentary power; who account for its extention over the colonies, upon the very absurd principle of their being *virtually* represented in the House of Commons.

tatives of the Commons of Great-Britain the representatives of the Americans? Are they elected by the Americans? Are they such as the Americans, if they had the power of election, would probably elect? Do they know the interest of the Americans? Does their own interest prompt them to pursue the interest of the Americans? If they do not pursue it, have the Americans power to punish them? Can the Americans remove unfaithful members at every new election? Can members, whom the Americans do not elect; with whom the Americans are not connected in interest; whom the Americans cannot remove; over whom the Americans have no influence—can such members be stiled, with any propriety, the magistrates of the Americans? Have those, who are bound by the laws of magistrates not their own, any security for the enjoyment of their absolute rights—those rights, “which every man is entitled to enjoy, whether in society or out of it?”¹⁹ Is it probable that those rights will be maintained? Is it “the primary end of government to maintain them?”²⁰ Shall this primary end be frustrated by a political maxim intended to promote it?

But from what source does this mighty, this uncontrouled authority of the House of Commons flow? From the collective body of the Commons of Great Britain. This authority must, therefore, originally reside in them; for whatever they convey to their representatives, must ultimately be in themselves.²¹ And have those, whom we have hitherto been accustomed to consider as our fellow-subjects, an absolute and unlimited power over us? Have they a natural right to make laws, by which we may be deprived of our properties, of our liberties, of our lives? By what title do they claim to be our masters? What act of ours

¹⁹ 1 Bl. Com. 123.

²⁰ 1 Bl. Com. 124.

²¹ It is self-evident that the power, with relation to the part we bear in the legislation, is absolutely, is solely in the electors. We have no legislative authority but what we derive from them. *Debates of the Commons*, vol. 6, p. 75.

has rendered us subject to those, to whom we were formerly equal? Is British Freedom denominated from the *soil*, or from the *People* of Britain? If from the latter, do they lose it by quitting the soil? Do those, who embark, freemen, in Great-Britain, disembark, slaves, in America? Are those, who fled from the oppression of regal and ministerial tyranny, now reduced to a state of vassalage to those, who, then, equally felt the same oppression? Whence proceeds this fatal change? Is this the return made us for leaving our friends and our country—for braving the danger of the deep—for planting a wilderness, inhabited only by savage men and savage beasts—for extending the dominions of the British Crown—for increasing the trade of the British merchants—for augmenting the rents of the British landlords—for heightening the wages of the British artificers? Britons should blush to make such a claim: Americans would blush to own it.

It is not, however, the ignominy only, but the danger also, with which we are threatened, that affects us. The many and careful provisions which are made by the British Constitution, that the electors of members of Parliament may be prevented from choosing Representatives, who would betray them; and that the Representatives may be prevented from betraying their constituents with impunity, sufficiently evince, that such precautions have been deemed absolutely necessary for securing and maintaining the system of British liberty.

How would the Commons of Great-Britain startle at a proposal, to deprive them of their share in the legislature, by rendering the House of Commons independant of them! With what indignation would they hear it! What resentment would they feel and discover against the authors of it! Yet the Commons of Great Britain would suffer less inconvenience from the execution of such a proposal, than the Americans will suffer from the extension of the legislative authority of Parliament over them.

The Members of Parliament, their families, their friends, their posterity must be subject, as well as others, to the laws. Their interest, and that of their families, friends, and posterity, cannot be different from the interest of the rest of the nation. A regard to the former will, therefore, direct to such measures as must promote the latter. But is this the case with respect to America? Are the Legislators of Great-Britain subject to the laws which are made for the Colonies? Is their interest the same with that of the Colonies? If we consider it in a large and comprehensive view, we shall discern it to be undoubtedly the same; but few will take the trouble to consider it in that view; and of those who do, few will be influenced by the consideration. Mankind are usually more affected with a near though inferior interest, than with one that is superior, but placed at a greater distance. As the conduct is regulated by the passions, it is not to be wondered at, if they secure the former, by measures which will forfeit the latter. Nay, the latter will frequently be regarded in the same manner as if it were prejudicial to them. It is with regret that I produce some late regulations of Parliament as proofs of what I have advanced. We have experienced what an easy matter it is for a Minister, with an ordinary share of art, to persuade the Parliament and the people, that taxes laid on the Colonies will ease the burthens of the mother Country; which, if the matter is considered in a proper light, is, in fact, to persuade them, that the stream of national riches will be increased by closing up the fountain, from which they flow.

As the Americans cannot avail themselves of that check, which interest puts upon the members of Parliament, and which would operate in favor of the Commons of Great-Britain, though they possessed no power over the Legislature; so the love of reputation, which is a powerful incitement to the Legislators to promote the welfare, and obtain the approbation, of those among whom they live, and whose praises or censures will reach and affect them, may have a contrary operation with re-

gard to the Colonies. It may become popular and reputable at home to oppress us. A candidate may recommend himself at his election by recounting the many successful instances, in which he has sacrificed the interests of America to those of Great-Britain. A Member of the House of Commons may plume himself upon his ingenuity in inventing schemes to serve the Mother Country at the expense of the Colonies; and may boast of their impotent resentment against him on that account.

Let us pause here a little.—Does neither the love of gain, the love of praise, nor the love of honour influence the members of the British Parliament in favor of the Americans? On what principles, then—on what motives of action, can we depend for the security of our Liberties, of our Properties, of everything dear to us in Life, of Life itself? Shall we depend on their veneration for the dictates of natural justice? A very little share of experience in the world—a very little degree of knowledge in the history of men, will sufficiently convince us, that a regard to justice is by no means the ruling principle in human nature. He would discover himself to be a very sorry statesman, who would erect a system of jurisprudence upon that slender foundation. “He would make,” as my Lord Bacon says, “imaginary laws for imaginary commonwealths; and his discourses, like the stars, would give little light, because they are so high.”²²

But this is not the worst that can justly be said concerning the situation of the Colonies, if they are bound by the Acts of the British Legislature. So far are those powerful springs of action, which we have mentioned, from interesting the members of that legislature in our favor, that, as has been already observed, we have the greatest reason to dread their operation against us. While the happy Commons of Great-Britain congratulate themselves upon the Liberty which they enjoy, and upon the provisions—infallible, as far as they can be rendered so by human wisdom—which are made for perpetuating it to

²² 2 *Ld. Bac.* 537.

their latest posterity; the unhappy Americans have reason to bewail the dangerous situation to which they are reduced; and to look forward, with dismal apprehension, to those future scenes of woe, which, in all probability, will open upon their descendants.

What has been already advanced will suffice to shew, that it is repugnant to the essential maxims of jurisprudence, to the ultimate end of all governments, to the genius of the British constitution, and to the liberty and happiness of the Colonies, that they should be bound by the legislative authority of the Parliament of Great-Britain. Such a doctrine is not less repugnant to the voice of her laws. In order to evince this, I shall appeal to some authorities from the books of the law, which show expressly, or by a necessary implication, that the Colonies are not bound by the Acts of the British Parliament; because they have no share in the British legislature.

The first case I shall mention was adjudged in the second year of Richard II^d. It was a solemn determination of all the Judges of England, met in the Exchequer-Chamber, to consider whether the people in Ireland were bound by an Act of parliament made in England. They resolved, "That they were not, as to such things as were done in Ireland; but that what they did out of Ireland must be conformable to the laws of England, because they were the subjects of England. Ireland," said they, "has a Parliament, who make laws; and our statutes do not bind them; BECAUSE THEY DO NOT SEND KNIGHTS TO PARLIAMENT: But their persons are the subjects of the king, in the same manner as the inhabitants of *Calais*, *Gascoigne*, and *Guienne*." ²³

This is the first case which we find in the books upon this subject; and it deserves to be examined with the most minute attention.

1. It appears, that the matter under consideration was deemed, at that time, to be of the greatest importance: for

²³ 4 Mod. 225; 7 Coke's Rep. 22 b., Calvin's case.

ordinary causes are never adjourned into the Exchequer-Chamber; only such are adjourned there as are of uncommon weight, or of uncommon difficulty. "Into the Exchequer-Chamber," says my Lord Coke,²⁴ "all cases of difficulty in the King's Bench, or Common Pleas, etc., are, and of ancient time have been, adjourned, and there debated, argued, and resolved, by all the Judges of England and Barons of the Exchequer." This Court proceeds with the greatest deliberation, and upon the most mature reflection. The case is first argued on both sides by learned Counsel; and then openly on several days, by all the Judges. Resolutions made with so much caution, and founded on so much legal knowledge, may be relied on as the surest evidences of what is law.

2. It is to be observed, that the extent of the legislative authority of Parliament is the very *point* of the adjudication. The decision was not incidental or indigested: it was not a sudden opinion, unsupported by reason and argument: it was an express and deliberate resolution of that very doubt, which they assembled to resolve.

3. It is very observable, that the reason, which those reverend sages of the law gave, why the people in Ireland were not bound by an Act of Parliament made in England, was the same with that, on which the Americans have founded their opposition to the late statutes made concerning them. The Irish did not send Members to Parliament; and, therefore, they were not bound by its Acts. From hence it undeniably appears, that parliamentary authority is derived *solely* from representation—that those, who are bound by Acts of Parliament, are bound for this only reason, because they are represented in it. If it were not the *only* reason, parliamentary authority might subsist independant of it. But as parliamentary authority fails wherever this reason does not operate, parliamentary authority can be

²⁴ 4 Ins. 110.

founded on no other principle. The law never ceases, but when the reason of it ceases also.

4. It deserves to be remarked, that no exception is made of *any* Statutes, which bind those who are not represented by the makers of them. The resolution of the judges extends to *every* Statute: they say, without limitation—"our Statutes do not bind them." And indeed the resolution ought to extend to every Statute: because the reason, on which it is founded, extends to every one. If a person is bound *only* because he is represented, it must certainly follow that wherever he is *not* represented he is *not* bound. No sound argument can be offered, why one Statute should be obligatory in such circumstances, and not another. If we cannot be deprived of our property by those, whom we do not commission for that purpose; can we, without any such commission, be deprived, by them, of our lives? Have those a right to imprison and gibbet us, who have not a right to tax us?

5. From this authority it follows, that it is by no means a rule, that the authority of Parliament extends to all the subjects of the Crown. The inhabitants of Ireland were the subjects of the king as of his crown of England; but it is expressly resolved, in the most solemn manner, that the inhabitants of Ireland are not bound by the Statutes of England. Allegiance to the King and obedience to the Parliament are founded on very different principles. The former is founded on protection; the latter, on representation. An inattention to this difference has produced, I apprehend, much uncertainty and confusion in our ideas concerning the connection, which ought to subsist between Great Britain and the American Colonies.

6. The last observation which I shall make on this case is, that if the inhabitants of Ireland are not bound by Acts of parliament made in England, *à fortiori*, the inhabitants of the American Colonies are not bound by them. There are marks of the subordination of Ireland to Great Britain, which cannot be traced in the Colonies. A writ of error lies from the King's

Bench in Ireland,²⁵ to the King's Bench, and consequently to the House of Lords, in England; by which means the former kingdom is subject to the control of the courts of justice of the latter kingdom. But a writ of error does not lie in the King's Bench, nor before the house of lords, in England, from the colonies of America. The proceedings in their Courts of Justice can be reviewed and controled only on an appeal to the King in Council.²⁶

The foregoing important decision, favorable to the liberty of all the dominions of the British crown that are not represented in the British Parliament, has been corroborated by subsequent adjudications. I shall mention one that was given in the King's Bench, in the fifth year of King William and Queen Mary, between *Blankard* and *Galdy*.²⁷

The plaintiff was Provost Marshal of Jamaica, and, by articles, granted a deputation of that office to the defendant, under a yearly rent. The defendant gave his bond for the performance of the agreement; and an action of debt was brought upon that bond. In bar of the action, the defendant pleaded the statute of 5 Ed. 6, made against buying and selling of offices that concern the administration of justice, and averred that this office concerned the administration of justice in Jamaica, and that, by virtue of that Statute, both the bond and articles were void. To this plea the plaintiff replied, that Jamaica was an island inhabited formerly by the Spaniards, "that it was conquered by the subjects of the kingdom of England, commissioned by legal and sufficient authority for that purpose; and that since that conquest its inhabitants were regulated and governed by their own proper Laws and Statutes, and not by Acts of Parliament or the Statutes of the kingdom of England." The defendant, in his rejoinder, admits that, before the con-

²⁵ 4 Ins. 356.

²⁶ 1 Bl. Com. 108, 231.

²⁷ 4 Mod. 215, Salk. 411.

quest of Jamaica by the English, the inhabitants were governed by their own laws, but alleges that "since the conquest it was part of the kingdom of England, and governed by the Laws and Statutes of the kingdom of England, and not by Laws and Statutes peculiar to the island." To this rejoinder the plaintiff demurred, and the defendant joined in demurrer.

Here was a cause to be determined judicially upon this single question in law—*Were the Acts of Parliament or Statutes of England in force in Jamaica?* It was argued on the opposite sides by Lawyers of the greatest eminence, before Lord Chief Justice Holt (a name renowned in the law) and his brethren, the Justices of the King's Bench. They unanimously gave judgment for the plaintiff; and, by that judgment, expressly determined—*That the Acts of Parliament or Statutes of England were not in force in Jamaica.* This decision is explicit in favor of America; for whatever was resolved concerning Jamaica is equally applicable to every American Colony.

Some years after the adjudication of this case, another was determined in the King's Bench, relating to Virginia; in which Lord Chief Justice Holt held, that the laws of England did not extend to Virginia.²⁸

I must not be so uncandid as to conceal, that in Calvin's case, where the above-mentioned decision of the Judges in the Exchequer Chamber, concerning Ireland, is quoted, it is added, by way of explanation of that authority,—“which is to be understood, unless it (Ireland) be especially named.” Nor will I conceal that the same exception²⁹ is taken notice of, and seems to be allowed, by the Judges in the other cases relating to America. To any objection that may, hence, be formed against my doctrine, I answer, in the words of the very accurate Mr. Justice Foster, that “general rules thrown out in argument, and

²⁸ Salk. 666.

²⁹ This exception does not seem to be taken in the case of 2d Richard II. which was the foundation of all the subsequent cases.

carried farther than the true state of the case then in judgment requireth, have, I confess, no great weight with me.”³⁰

The question before the Judges in the cases I have reasoned from, was not how far the naming of persons in an Act of Parliament would affect them; though, unless named, they would not be bound by it: the question was, whether the legislative authority of Parliament extended over the inhabitants of Ireland or Jamaica or Virginia. To the resolution of the latter question the resolution of the former was by no means necessary, and was, therefore, wholly impertinent to the point of the adjudication.

But farther, the reason assigned for the resolution of the latter question is solid and convincing: the American Colonies are not bound by the Acts of the British Parliament, because they are not represented in it. But what reason can be assigned why they should be bound by those Acts, in which they are specially named? Does naming them give those, who do them that honor, a right to rule over them? Is this the source of the supreme, the absolute, the irresistible, the uncontrouled authority of Parliament? These positions are too absurd to be alledged; and a thousand judicial determinations in their favour would never induce one man of sense to subscribe his assent to them.³¹

³⁰ Foster's Crown Law, 313.

³¹ Where a decision is manifestly absurd and unjust, such a sentence is *not law*. 1 Bl. Com. 70.

The legality of the opinion “that the people in Ireland were bound by the statutes of England, when particularly named by them,” seems afterwards to have been doubted of by Lord Coke himself, in another place of his works. After having mentioned the resolution in the Exchequer Chamber in the time of Richard II, and having taken notice that question is made of it in some of the books, and particularly in Calvin's case, he says, “that the question concerning the binding force of English statutes over Ireland is now by common experience and opinion without any scruple resolved; that the acts of parliament made in England, since the act of the 10th H. 7 (he makes no exceptions), do not bind them in Ireland; but all acts made in England before 10, H. 7, *by the said act made in Ireland An. 10, H. 7, c. 22*, do bind them in Ireland.” 12 Rep. III.

The obligatory force of the British statutes upon the Colonies, when named in them, must be accounted for, by the advocates of that power, upon some other principle. In my Lord Coke's Reports, it is said, "that albeit Ireland be a distinct dominion, yet, *the title thereof being by conquest*, the same, by judgment of law, may be, by express words, bound by the Parliaments of England." In *this* instance, the obligatory authority of the Parliament is plainly referred to a *title by conquest*, as its foundation and original. In the instances relating to the colonies, this authority seems to be referred to the same source; for any one, who compares what is said of Ireland, and other conquered countries, in Calvin's case, with what is said of America, in the adjudications concerning it, will find that the Judges, in determining the latter, have grounded their opinions on the resolution given in the former.³² It is foreign to my purpose to inquire into the reasonableness of founding the authority of the British Parliament over Ireland, upon the title of conquest, though I believe it would be somewhat difficult to deduce it satisfactorily in this manner. It will be sufficient for me to show, that it is unreasonable, and injurious to the Colonies, to

³² It is plain that Blackstone understood the opinion of the judges—that the Colonies are bound by acts of the British Parliament, if named in them—to be founded on the principle of conquest. It will not be improper to insert his commentary upon the resolutions respecting America. "Besides these adjacent islands (Jersey, &c.), our more distant Plantations in America and elsewhere are also, in some respects, subject to the English laws. Plantations, or Colonies in distant countries, are either such where the lands are claimed in right of occupancy only, by finding them desert and uncultivated, and peopling them from the Mother Country; or where, when already cultivated, they have been either gained by conquest, or ceded to us by treaties. Our American Plantations are principally of this latter sort; being obtained in the last century, either *by right of conquest*, and driving out the natives (with what natural justice I shall not at present inquire) or by treaties." 1 Bl. Com. 106, 107.

Lord Chief Justice Holt, in a case above cited, calls Virginia a conquered country. Salk. 666.

extend that title to them. How came the Colonists to be a conquered people? By whom was the conquest over them obtained? By the House of Commons? By the constituents of that House? If the idea of conquest must be taken into consideration when we examine into the title by which America is held, that idea, so far as it can operate, will operate in favour of the Colonists, and not against them. Permitted and commissioned by the Crown, they undertook, at their own expense, expeditions to this distant country, took possession of it, planted it, and cultivated it. Secure under the protection of their King, they grew and multiplied, and diffused British freedom and British spirit, wherever they came. Happy in the enjoyment of liberty, and in reaping the fruits of their toils; but still more happy in the joyful prospect of transmitting their liberty and their fortunes to the latest posterity, they inculcated to their children the warmest sentiments of loyalty to their sovereign, under whose auspices they enjoyed so many blessings, and of affection and esteem for the inhabitants of the Mother Country, with whom they gloried in being intimately connected. Lessons of loyalty to Parliament, indeed, they never gave: they never suspected that such unheard-of loyalty would be required. They never suspected that their descendants would be considered and treated as a conquered people; and therefore they never taught them the submission and abject behaviour suited to that character.

I am sufficiently aware of an objection, that will be made to what I have said concerning the legislative authority of the British Parliament. It will be alleged, that I throw off all dependance on Great-Britain. This objection will be held forth, in its most specious colors, by those, who, from servility of soul, or from mercenary considerations, would meanly bow their necks to every exertion of arbitrary power: it may likewise alarm some, who entertain the most favorable opinion of the connexion between Great-Britain and her Colonies; but who

are not sufficiently acquainted with the nature of that connexion, which is so dear to them. Those of the first class, I hope, are few; I am sure they are contemptible, and deserve to have very little regard paid to them: but for the sake of those of the second class, who may be more numerous, and whose laudable principles atone for their mistakes, I shall take some pains to obviate the objection, and to show that a denial of the legislative authority of the British Parliament over America is by no means inconsistent with that connexion, which ought to subsist between the Mother Country and her Colonies, and which, at the first settlement of those Colonies, it was intended to maintain between them; but that, on the contrary, that connexion would be entirely destroyed by the extension of the power of Parliament over the American plantations.

Let us examine what is meant by a *Dependance* on Great-Britain: for it is always of importance clearly to define the terms that we use. Blackstone, who, speaking of the Colonies, tells us, that "they are no part of the Mother Country, but distinct (though *dependent*) dominions,"³³ explains dependance in this manner. "Dependance is very little else, but an obligation to conform to the will or law of that superior person or state, upon which the inferior depends. The original and true ground of this superiority, in the case of Ireland, is what we usually call, though somewhat improperly, the right of conquest; a right allowed by the law of nations, if not by that of nature; but which, in reason and civil policy, can mean nothing more, than that, in order to put an end to hostilities, a compact is either expressly or tacitly made between the conqueror and the conquered, that if they will acknowledge the victor for their master, he will treat them for the future as subjects, and not as enemies."³⁴

³³ 1 Bl. Com. 107.

³⁴ Id. 103.

The original and true ground of the superiority of Great-Britain over the American Colonies is not shewn in any book of the law, unless, as I have already observed, it be derived from the right of conquest. But I have proved, and I hope satisfactorily, that this right is altogether inapplicable to the Colonists. The original of the superiority of Great Britain over the Colonies is, then, unaccounted for; and when we consider the ingenuity and pains which have lately been employed at home on this subject, we may justly conclude, that the only reason why it is not accounted for, is, that it cannot be accounted for. The superiority of Great-Britain over the Colonies ought, therefore, to be rejected; and the dependance of the Colonies upon her, if it is to be construed into "an obligation to conform to the will or law of the superior state," ought, in *this* sense, to be rejected also.

My sentiments concerning this matter are not singular. They coincide with the declarations and remonstrances of the Colonies against the statutes imposing taxes on them. It was their unanimous opinion, that the Parliament have no *right* to exact obedience to those statutes; and, consequently, that the Colonies are under no *obligation* to obey them. The dependance of the Colonies on Great-Britain was denied, in those instances; but a denial of it in those instances is, in effect, a denial of it in all other instances. For, if dependance is an obligation to conform to the will or law of the superior state, any exceptions to that obligation must destroy the dependance. If, therefore, by a dependance of the Colonies on Great-Britain, it is meant, that they are obliged to obey the laws of Great-Britain, reason, as well as the unanimous voice of the Americans, teaches us to disown it. Such a dependance was never thought of by those who left Britain, in order to settle in America; nor by their Sovereigns, who gave them commissions for that purpose. Such an *obligation* has no correspondent *right*: for the Commons of

Great-Britain have no dominion over their equals and fellow-subjects in America; They can confer no right to their delegates to bind those equals and fellow-subjects by laws.

There is another, and a much more reasonable meaning, which may be intended by the dependance of the Colonies on Great-Britain. The phrase may be used to denote the obedience and loyalty, which the Colonists owe to the *Kings* of Great-Britain. If it should be alledged, that this cannot be the meaning of the expression, because it is applied to the *kingdom*, and not to the *King*, I give the same answer that my Lord Bacon gave to those who said that allegiance related to the kingdom and not to the king; because in the statutes there are these words—"born within the allegiance of *England*"—and again—"born without the allegiance of *England*." "There is no trope of speech more familiar," says he, "than to use the *place* of addition for the *person*. So we say commonly, the line of York, or the line of Lancaster, for the lines of the Duke of York, or the Duke of Lancaster. So we say the possessions of Somerset or Warwick, intending the possessions of the Dukes of Somerset, or Earls of Warwick. And in the very same manner, the statute speaks, allegiance of England, for allegiance of the King of England." ³⁵

Dependence on the Mother Country seems to have been understood in this sense, both by the first planters of the Colonies, and also by the most eminent Lawyers, at that time, in England.

Those who launched into the unknown deep, in quest of new countries and habitations, still considered themselves as subjects of the English Monarchs, and behaved suitably to that character; but it nowhere appears, that they still considered themselves as represented in an English Parliament, or that they thought the authority of the English Parliament extended over them. They took possession of the country in the *King's* name: they treated, or made war with the Indians by *his* authority:

³⁵ 4 Ld. Bac. 192, 193, Case of the postnati of Scotland.

they held the lands under *his* grants, and paid *him* the rents reserved upon them: they established governments under the sanction of *his* prerogative, or by virtue of *his* charters.—No application for those purposes was made to the Parliament: No ratification of the charters or letters patent was solicited from that assembly, as is usual in England with regard to grants and franchises of much less importance.

My Lord Bacon's sentiments on this subject ought to have great weight with us. His immense genius, his universal learning, his deep insight into the laws and constitution of England, are well known and much admired. Besides, he lived at that time when settling and improving the American Plantations began seriously to be attended to, and successfully to be carried into execution.³⁶ Plans for the government and regulation of the Colonies were then forming: and it is only from the first general idea of these plans, that we can unfold, with precision and accuracy, all the more minute and intricate parts, of which they now consist. "The settlement of Colonies," says he, "must proceed from the option of those who will settle them, else it sounds like an exile: they must be raised by the *leave*, and not by the *command* of the *King*. At their setting out, they must have their commission, or letters patent, from the *King*, that so they may acknowledge their *dependancy upon the Crown* of England, and under his protection." In another place he says, "that they still must be *subjects* of the realm."³⁷ "In order to regulate all the inconveniences, which will insensibly grow upon them," he proposes, "that the King should erect a subordinate council in England, whose care and charge shall be, to advise,

³⁶ During the reign of Queen Elizabeth, America was chiefly valued on account of its mines. It was not till the reign of James I., that any vigorous attempts were made to clear and improve the soil.

³⁷ The Parliament have no subjects. My Lord Bacon gives, in this expression, an instance of the trope of speech before mentioned. He says, the subjects of the *realm*, when he means the subjects of the *king* of the realm.

and put in execution, all things which shall be found fit for the good of those new Plantations; who, upon all occasions, shall give an account of their proceedings, to the *King* or the *Council-Board*, and from *them* receive such directions, as may best agree with the government of that place.”³⁸ It is evident, from these quotations, that my Lord Bacon had no conception that the Parliament *would* or *ought* to interpose,³⁹ either in the settlement or the government of the Colonies. The only relation, in which he says the Colonists must still continue, is that of subjects: the only dependancy, which they ought to acknowledge, is a dependancy, on the Crown.

This is a dependance, which they have acknowledged hitherto; which they acknowledge now; and which, if it is reasonable to judge of the future by the past and the present, they will continue to acknowledge hereafter. It is not a dependance, like that contended for on Parliament, slavish and unaccountable, or accounted for only by principles that are false and inapplicable: it is a dependance founded upon the principles of reason, of liberty and of law. Let us investigate its sources.

The Colonists ought to be dependant on the King, because they have hitherto enjoyed, and still continue to enjoy, his protection. Allegiance is the faith and obedience, which every subject owes to his Prince. This obedience is founded on the protection derived from government: for protection and allegiance are the reciprocal bonds, which connect the Prince and his subjects.⁴⁰ Every subject, so soon as he is born, is under the royal protection, and is entitled to all the advantages arising from it. He therefore owes obedience to that royal power, from which

³⁸ 1 *Ld. Bac.* 725, 726.

³⁹ It was chiefly during the confusions of the republic, when the king was in exile, and unable to assert his rights, that the House of Commons began to interfere in colony matters.

⁴⁰ Between the Sovereign and subject there is duplex et reciprocum ligamen; quia sicut subditus regi tenetur ad obedientiam; ita Rex subdito tenetur ad protectionem: Merito igitur ligeantia dicitur a ligando, quia continet in se duplex ligamen. 7 *Rep.* 5a, Calvin's case.

the protection, which he enjoys, is derived. But while he continues in infancy and nonage, he cannot perform the duties which his allegiance requires. The performance of them must be respited till he arrive at the years of discretion and maturity. When he arrives at those years, he owes obedience, not only for the protection which he now enjoys, but also for that which from his birth, he has enjoyed; and to which his tender age has hitherto prevented him from making a suitable return. Allegiance now becomes a duty founded upon principles of gratitude, as well as on principles of interest: It becomes a debt, which nothing but the loyalty of a whole life will discharge.⁴¹ As neither climate, nor soil, nor time entitle a person to the benefits of a subject; so an alteration of climate, of soil, or of time cannot release him from the duties of one. An Englishman, who removes to foreign countries, however distant from England, owes the same allegiance to his King there which he owed him at home; and will owe it twenty years hence as much as he owes it now. Wherever he is, he is still liable to the punishment annexed by law to crimes against his allegiance; and still entitled to the advantages promised by law to the duties of it: it is not *cancelled*; and it is not *forfeited*. "Hence all children born in any part of the world, if they be of English parents continuing at that time as liege subjects to the King, and having done no act to forfeit the benefit of their allegiance, are *ipso facto* naturalized: And if they have issue, and their descendants intermarry among themselves, such descendants are naturalized to all generations." ⁴²

Thus we see, that the subjects of the King, though they reside

⁴¹ The king is protector of all his subjects; in virtue of his high trust, he is more particularly to take care of those who are not able to take care of themselves, consequently of infants, who, by reason of their nonage, are under incapacities; from hence natural allegiance arises, as a debt of gratitude, which can never be cancelled, though the subject owing it goes out of the kingdom, or swears allegiance to another Prince. 2 P. Wms. 123, 124.

⁴² 4 Ld. Bac. 192. Case of the postnati of Scotland.

in foreign countries, still owe the duties of allegiance, and are still entitled to the advantages of it. They transmit to their posterity the privilege of naturalization, and all the other privileges which are the consequences of it.⁴³

Now we have explained the dependance of the Americans. They are the subjects of the King of Great-Britain. They owe him allegiance. They have a right to the benefits which arise from preserving that allegiance inviolate. They are liable to the punishments which await those who break it. This is a dependance, which they have always boasted of. The principles of loyalty are deeply rooted in their hearts; and there they will grow and bring forth fruit, while a drop of vital blood remains to nourish them. Their history is not stained with rebellious and treasonable machinations: An inviolable attachment to their sovereign, and the warmest zeal for his glory, shine in every page.

From this dependance, abstracted from every other source, arises a strict connexion between the inhabitants of Great-Britain and those of America. They are fellow-subjects; they are under allegiance to the same Prince; and this union of allegiance naturally produces a union of hearts. It is also productive of a union of measures through the whole British dominions. To the King is intrusted the direction and management of the great machine of government. He therefore is fittest to adjust the different wheels, and to regulate their motions in such a manner as to co-operate in the same general designs. He makes war: He concludes peace: He forms alliances: He regulates domestic trade by his prerogative, and directs foreign commerce by his treaties with those nations, with whom it is carried on. He names the officers of government; so that he can check every jarring movement in the administration. He has a nega-

⁴³ Natural-born subjects have a great variety of rights, which they acquire by being born in the King's ligeance, and can never forfeit by any distance of place or time, but only by their own misbehaviour; the explanation of which rights is the principal subject of the law. 1 Bl. Com. 371.

tive on the different legislatures throughout his dominions, so that he can prevent any repugnancy in their different laws.

The connexion and harmony between Great-Britain and us, which it is her interest and ours mutually to cultivate, and on which her prosperity, as well as ours, so materially depends, will be better preserved by the operation of the legal prerogatives of the Crown, than by the exertion of an unlimited authority by Parliament.⁴⁴

⁴⁴ After considering, with all the attention of which I am capable, the foregoing opinion—that *all the different members of the British empire* are DISTINCT STATES, INDEPENDANT OF EACH OTHER, BUT CONNECTED TOGETHER UNDER THE SAME SOVEREIGN IN RIGHT OF THE SAME CROWN—I discover only one objection that can be offered against it. But this objection will, by many, be deemed a fatal one. "How, it will be urged, can the trade of the British Empire be carried on, without some power, extending over the whole, to regulate it? The legislative authority of each part, according to your doctrine, is confined within the local bounds of that part: how, then, can so many interfering interests and claims, as must necessarily meet and contend in the commerce of the whole, be decided and adjusted?"

Permit me to answer these Questions by proposing some others in my turn. How has the trade of Europe—how has the trade of the whole globe, been carried on? Have those widely extended plans been formed by one superintending power? Have they been carried into execution by one superintending power? Have they been formed—have they been carried into execution, with less conformity to the rules of justice and equality, than if they had been under the direction of one superintending power?

It has been the opinion of some Politicians, of no inferior note, that all regulations of Trade are useless; that the greatest part of them are hurtful; and that the stream of Commerce never flows with so much beauty and advantage, as when it is not diverted from its natural channels. Whether this opinion is well founded or not, let others determine. Thus much may certainly be said, that commerce is not so properly the object of Laws, as of Treaties and Compacts. In this manner, it has been always directed among the several nations of Europe.

But if the Commerce of the British Empire must be regulated by a general superintending power, capable of exerting its influence over every part of it, why may not this power be intrusted to the king, as a part of the royal prerogative? By making treaties, which it is his prerogative to make, he directs the Trade of Great-Britain with the

other states of Europe: and his Treaties with those states have, when considered with regard to his subjects, all the binding force of Laws upon them.* Where is the absurdity in supposing him vested with the same right to regulate the Commerce of the distinct parts of his dominions with one another, which he has to regulate their Commerce with foreign states? If the history of the British Constitution, relating to this subject, be carefully traced, I apprehend we shall discover, that a prerogative in the Crown, to regulate Trade, is perfectly consistent with the principles of law. We find many authorities that the king cannot lay impositions on Traffic; and that he cannot restrain it *altogether*, nor confine it to Monopolists; but none of the authorities, that I have had an opportunity of consulting, go any farther. Indeed many of them seem to imply a power in the Crown to regulate Trade, where that power is exerted for the great end of all prerogative—the public good.

If the power of regulating Trade be, as I am apt to believe it to be, vested, by the principles of the constitution, in the Crown, this good effect will flow from the doctrine: a perpetual distinction will be kept up between that power, and a power of laying impositions on Trade. The prerogative will extend to the former: it can, under no pretence, extend to the latter: as it is given, so it is *limited*, by the Law.

* The King may make a treaty with a foreign State, which shall irrevocably bind the nation. I Blackstone, 252.

AN ADDRESS DELIVERED IN THE CONVENTION OF
THE PROVINCE OF PENNSYLVANIA HELD
AT PHILADELPHIA IN JANUARY
1775

(Text from No. 16 of Bibliography)

SPEECH IN CONVENTION,
IN JANUARY, 1775

Whence, Sir, proceeds all the invidious and ill-grounded clamour against the colonists of America? Why are they stigmatized, in Britain, as licentious and ungovernable? Why is their virtuous opposition to the illegal attempts of their governors, represented under the falsest colours, and placed in the most ungracious point of view? This opposition, when exhibited in its true light, and when viewed, with unjaundiced eyes, from a proper situation, and at a proper distance, stands confessed the lovely offspring of freedom. It breathes the spirit of its parent. Of this ethereal spirit, the whole conduct, and particularly the late conduct, of the colonists has shown them eminently possessed. It has animated and regulated every part of their proceedings. It has been recognised to be genuine, by all those symptoms and effects, by which it has been distinguished in other ages and other countries. It has been calm and regular : it has not acted without occasion : it has not acted disproportionately to the occasion. As the attempts, open or secret, to undermine or to destroy it, have been repeated or enforced ; in a just degree, its vigilance and its vigour have been exerted to defeat or to disappoint them. As its exertions have been sufficient for those purposes hitherto, let us hence draw a joyful prognostick, that they will continue sufficient for those purposes hereafter. It is not yet exhausted ; it will still operate irresistibly whenever a necessary occasion shall call forth its strength.

Permit me, sir, by appealing, in a few instances, to the spirit and conduct of the colonists, to evince, that what I have said

of them is just. Did they disclose any uneasiness at the proceedings and claims of the British parliament, before those claims and proceedings afforded a reasonable cause for it? Did they even disclose any uneasiness, when a reasonable cause for it was *first* given? Our rights were invaded by their regulations of our internal policy. We submitted to them: we were unwilling to oppose them. The spirit of liberty was slow to act. When those invasions were renewed; when the efficacy and malignancy of them were attempted to be redoubled by the stamp act; when chains were formed for us; and preparations were made for rivetting them on our limbs—what measures did we pursue? The spirit of liberty found it necessary now to act: but she acted with the calmness and decent dignity suited to her character. Were we rash or seditious? Did we discover want of loyalty to our sovereign? Did we betray want of affection to our brethren in Britain? Let our dutiful and reverential petitions to the throne—let our respectful, though firm, remonstrances to the parliament—let our warm and affectionate addresses to our brethren, and (we will still call them) our friends in Great Britain—let all those, transmitted from every part of the continent, testify the truth. By their testimony let our conduct be tried.

As our proceedings during the existence and operation of the stamp act prove fully and incontestably the painful sensations that tortured our breasts from the prospect of disunion with Britain; the peals of joy, which burst forth universally, upon the repeal of that odious statute, loudly proclaim the heartfelt delight produced in us by a reconciliation with her. Unsuspicious, because undesigning, we buried our complaints, and the causes of them, in oblivion, and returned, with eagerness, to our former unreserved confidence. Our connexion with our parent country, and the reciprocal blessings resulting from it to her and to us, were the favourite and pleasing topicks of our publick discourses and our private conversations. Lulled into delightful security, we dreamt of nothing but increasing fondness and friendship,

cemented and strengthened by a kind and perpetual communication of good offices. Soon, however, too soon, were we awakened from the soothing dreams! Our enemies renewed their designs against us, not with less malice, but with more art. Under the plausible pretence of regulating our trade, and, at the same time, of making provision for the administration of justice, and the support of government, in some of the colonies, they pursued their scheme of depriving us of our property without our consent. As the attempts to distress us, and to degrade us to a rank inferiour to that of freemen, appeared now to be reduced into a regular system, it became proper, on our part, to form a regular system for counteracting them. We ceased to import goods from Great Britain. Was this measure dictated by selfishness or by licentiousness? Did it not injure ourselves, while it injured the British merchants and manufacturers? Was it inconsistent with the peaceful demeanour of subjects to abstain from making purchases, when our freedom and our safety rendered it necessary for us to abstain from them? A regard for our freedom and our safety was our only motive; for no sooner had the parliament, by repealing part of the revenue laws, inspired us with the flattering hopes that they had departed from their intentions of oppressing and of taxing us, than we forsook our plan for defeating those intentions, and began to import as formerly. Far from being peevish or captious, we took no publick notice even of their declaratory law of dominion over us: our candour led us to consider it as a decent expedient of retreating from the actual exercise of that dominion.

But, alas! the root of bitterness still remained. The duty on tea was reserved to furnish occasion to the ministry for a new effort to enslave and to ruin us; and the East India Company were chosen, and consented, to be the detested instruments of ministerial despotism and cruelty. A cargo of their tea arrived at Boston. By a low artifice of the governour, and by the wicked activity of the tools of government, it was rendered impossible

to store it up, or to send it back; as was done at other places. A number of persons unknown destroyed it.

Let us here make a concession to our enemies: let us suppose that the transaction deserves all the dark and hideous colours, in which they have painted it: let us even suppose—for our cause admits of an excess of candour—that all their exaggerated accounts of it were confined strictly to the truth: what will follow? Will it follow, that every British colony in America, or even the colony of Massachussetts Bay, or even the town of Boston in that colony, merits the imputation of being factious and seditious? Let the frequent mobs and riots that have happened in Great Britain upon much more trivial occasions shame our calumniators into silence. Will it follow, because the rules of order and regular government were, in that instance, violated by the offenders, that, for this reason, the principles of the constitution, and the maxims of justice, must be violated by their punishment? Will it follow, because those who were guilty could not be known, that, therefore, those who were known not to be guilty must suffer? Will it follow, that even the guilty should be condemned without being heard?—That they should be condemned upon partial testimony, upon the representations of their avowed and embittered enemies? Why were they not tried in courts of justice known to their constitution, and by juries of their neighborhood? Their courts and their juries were not, in the case of Captain Preston, transported beyond the bounds of justice by their resentment: why, then, should it be presumed, that, in the case of those offenders, they would be prevented from doing justice by their affection? But the colonists, it seems, must be stript of their judicial, as well as of their legislative powers. They must be bound by a legislature, they must be tried by a jurisdiction, not their own. Their constitutions must be changed: their liberties must be abridged: and those, who shall be most infamously active in changing their constitutions and

abridging their liberties, must, by an express provision, be exempted from punishment.

I do not exaggerate the matter, sir, when I extend these observations to all the colonists. The parliament meant to extend the effects of their proceedings to all the colonists. The plan, on which their proceedings are formed, extends to them all. From an incident, of no very uncommon or atrocious nature, which happened in one colony, in one town in that colony, and in which only a few of the inhabitants of that town took a part, an occasion has been taken by those, who probably intended it, and who certainly prepared the way for it, to impose upon that colony, and to lay a foundation and a precedent for imposing upon all the rest, a system of statutes, arbitrary, unconstitutional, oppressive, in every view and in every degree subversive of the rights and inconsistent with even the name of freemen.

Were the colonists so blind as not to discern the consequences of these measures? Were they so supinely inactive as to take no steps for guarding against them? They were not. They ought not to have been so. We saw a breach made in those barriers, which our ancestors, British and American, with so much care, with so much danger, with so much treasure, and with so much blood, had erected, cemented, and established for the security of their liberties and—with filial piety let us mention it—of ours: we saw the attack actually begun upon one part: ought we to have folded our hands in indolence, to have lulled our eyes in slumbers, till the attack was carried on, so as to become irresistible, in every part? Sir, I presume to think not. We were roused; we were alarmed, as we had reason to be. But still our measures have been such as the spirit of liberty and of loyalty directed; not such as a spirit of sedition or of disaffection would pursue. Our counsels have been conducted without rashness and faction: our resolutions have been taken without phrensy or fury.

That the sentiments of every individual concerning that im-

portant object, his liberty, might be known and regarded, meetings have been held, and deliberations carried on in every particular district. That the sentiments of all those individuals might gradually and regularly be collected into a single point, and the conduct of each inspired and directed by the result of the whole united, county committees—provincial conventions—a continental congress have been appointed, have met and resolved. By this means, a chain—more inestimable, and, while the necessity for it continues, we hope, more indissoluble than one of gold—a chain of freedom has been formed, of which every individual in these colonies, who is willing to preserve the greatest of human blessings, his liberty, has the pleasure of beholding himself a link.

Are these measures, sir, the brats of disloyalty, of disaffection? There are miscreants among us—wasps that suck poison from the most salubrious flowers—who tell us they are. They tell us that all those assemblies are unlawful, and unauthorized by our constitutions; and that all their deliberations and resolutions are so many transgressions of the duty of subjects. The utmost malice brooding over the utmost baseness, and nothing but such a hated commixture, must have hatched this calumny. Do not those men know—would they have others not to know—that it was impossible for the inhabitants of the same province, and for the legislatures of the different provinces, to communicate their sentiments to one another in the modes appointed for such purposes, by their different constitutions? Do not they know—would they have others not to know—that all this was rendered impossible by those very persons, who now, or whose minions now, urge this objection against us? Do not they know—would they have others not to know—that the different assemblies, who could be dissolved by the governors, were, in consequence of ministerial mandates, dissolved by them, whenever they attempted to turn their attention to the greatest objects, which, as guardians of the liberty of

their constituents, could be presented to their view? The arch enemy of the human race torments them only for those actions, to which he has tempted, but to which he has not necessarily obliged them. Those men refine even upon infernal malice: they accuse, they threaten us (superlative impudence!) for taking those very steps, which we were laid under the disagreeable necessity of taking by themselves, or by those in whose hateful service they are enlisted. But let them know, that our counsels, our deliberations, our resolutions, if not authorized by the forms, because that was rendered impossible by our enemies, are nevertheless authorized by that which weighs much more in the scale of reason—by the spirit of our constitutions. Was the convention of the barons at Running Meade, where the tyranny of John was checked, and magna charta was signed, authorized by the forms of the constitution? Was the convention parliament, that recalled Charles the second, and restored the monarchy, authorized by the forms of the constitution? Was the convention of lords and commons, that placed King William on the throne, and secured the monarchy and liberty likewise, authorized by the forms of the constitution? I cannot conceal my emotions of pleasure, when I observe, that the objections of our adversaries cannot be urged against us, but in common with those venerable assemblies, whose proceedings formed such an accession to British liberty and British renown.

The resolutions entered into, and the recommendations given, by the continental congress, have stamped, in the plainest characters, the genuine and enlightened spirit of liberty upon the conduct observed, and the measures pursued, in consequence of them. As the invasions of our rights have become more and more formidable, our opposition to them has increased in firmness and vigour, in a just, and in no more than a just, proportion. We will not import goods from Great Britain or Ireland: in a little time we will suspend our exportations to them: and,

if the same illiberal and destructive system of policy be still carried on against us, in a little time more we will not consume their manufactures. In that colony where the attacks have been most open, immediate, and direct, some farther steps have been taken, and those steps have met with the deserved approbation of the other provinces.

Is this scheme of conduct allied to rebellion? Can any symptoms of disloyalty to his majesty, of disinclination to his illustrious family, or of disregard to his authority be traced in it? Those, who would blend, and whose crimes have made it necessary for them to blend, the tyrannick acts of administration with the lawful measures of government, and to veil every flagitious procedure of the ministry under the venerable mantle of majesty, pretend to discover, and employ their emissaries to publish the pretended discovery of such symptoms. We are not, however, to be imposed upon by such shallow artifices. We know, that we have not violated the laws or the constitution; and that, therefore, we are safe as long as the laws retain their force and the constitution its vigour; and that, whatever our demeanour be, we cannot be safe much longer. But another object demands our attention.

We behold—sir, with the deepest anguish we behold—that our opposition has not been as effectual as it has been constitutional. The hearts of our oppressors have not relented: our complaints have not been heard: our grievances have not been redressed: our rights are still invaded: and have we no cause to dread, that the invasions of them will be enforced in a manner, against which all reason and argument, and all opposition of every peaceful kind, will be vain? Our opposition has hitherto increased with our oppression: shall it, in the most desperate of all contingencies, observe the same proportion?

Let us pause, sir, before we give an answer to this question: the fate of us; the fate of millions now alive; the fate of millions yet unborn depends upon the answer. Let it be the result

of calmness and of intrepidity: let it be dictated by the principles of loyalty, and the principles of liberty. Let it be such, as never, in the worst events, to give us reason to reproach ourselves, or other reasons to reproach us for having done too much or too little.

Perhaps the following resolution may be found not altogether unbecoming our present situation. With the greatest deference I submit it to the mature consideration of this assembly.

“That the act of the British parliament for altering the charter and constitution of the colony of Massachussetts Bay, and those “for the impartial administration of justice” in that colony, for shutting the port of Boston, and for quartering soldiers on the inhabitants of the colonies, are unconstitutional and void; and can confer no authority upon those who act under colour of them. That the crown cannot, by its prerogative, alter the charter or constitution of that colony: that all attempts to alter the said charter or constitution, unless by the authority of the legislature of that colony, are manifest violations of the rights of that colony, and illegal: that all force employed to carry such unjust and illegal attempts into execution is force without authority: that it is the right of British subjects to resist such force: that this right is founded both upon the letter and the spirit of the British constitution.”

To prove, at this time, that those acts are unconstitutional and void is, I apprehend, altogether unnecessary. The doctrine has been proved fully, on other occasions, and has received the concurring assent of British America. It rests upon plain and indubitable truths. We do not send members to the British parliament: we have parliaments (it is immaterial what name they go by) of our own.

That a void act can confer no authority upon those, who proceed under colour of it, is a selfevident proposition.

Before I proceed to the other clauses, I think it useful to recur to some of the fundamental maxims of the British con-

stitution ; upon which, as upon a rock, our wise ancestors erected that stable fabrick, against which the gates of hell have not hitherto prevailed. Those maxims I shall apply fairly, and, I flatter myself, satisfactorily to evince every particular contained in the resolution.

The government of Britain, sir, was never an arbitrary government : our ancestors were never inconsiderate enough to trust those rights, which God and nature had given them, unreservedly into the hands of their princes. However difficult it may be, in other states, to prove an original contract subsisting in any other manner, and on any other conditions, than are naturally and necessarily implied in the very idea of the first institution of a state ; it is the easiest thing imaginable, since the revolution of 1688, to prove it in our constitution, and to ascertain some of the material articles, of which it consists. It has been often appealed to : it has been often broken, at least on one part : it has been often renewed : it has been often confirmed : it still subsists in its full force : "it binds the king as much as the meanest subject."¹ The measures of his power, and the limits, beyond which he cannot extend it, are circumscribed and regulated by the same authority, and with the same precision, as the measures of the subject's obedience, and the limits, beyond which he is under no obligation to practise it, are fixed and ascertained. Liberty is, by the constitution, of equal stability, of equal antiquity, and of equal authority with prerogative. The duties of the king and those of the subject are plainly reciprocal : they can be violated on neither side, unless they be performed on the other.² The law is the common standard, by which the excesses of prerogative as well as the excesses of liberty are to be regulated and reformed.

¹ Bol. Pat. King. 122.

² Bol. Tracts, 293. The compact between the king and people is mutual, and the parties are mutually bound. 11 Parl. Deb. 455. (Ld. Chesterfield.)

Of this great compact between the king and his people, one essential article to be performed on his part is—that, in those cases where provision is expressly made and limitations set by the laws, his government shall be conducted according to those provisions, and restrained according to those limitations—that, in those cases, which are not expressly provided for by the laws, it shall be conducted by the best rules of discretion, agreeably to the general spirit of the laws, and subserviently to their ultimate end—the interest and happiness of his subjects—that, in no case, it shall be conducted contrary to the express, or to the implied principles of the constitution.

These general maxims, which we may justly consider as fundamentals of our government, will, by a plain and obvious application of them to the parts of the resolution remaining to be proved, demonstrate them to be strictly agreeable to the laws and constitution.

We can be at no loss in resolving, that the king cannot, by his prerogative, alter the charter or constitution of the colony of Massachussetts Bay. Upon what principle could such an exertion of prerogative be justified? On the acts of parliament? They are already proved to be void. On the discretionary power which the king has of acting where the laws are silent? That power must be subservient to the interest and happiness of those, concerning whom it operates. But I go farther. Instead of being supported by law, or the principles of prerogative, such an alteration is totally and absolutely repugnant to both. It is contrary to express law. The charter and constitution we speak of are confirmed by the only legislative power capable of confirming them: and no other power, but that which can ratify, can destroy. If it is contrary to express law, the consequence is necessary, that it is contrary to the principles of prerogative: for prerogative can operate only when the law is silent.

In no view can this alteration be justified, or so much as excused. It cannot be justified or excused by the acts of parlia-

ment; because the authority of parliament does not extend to it: it cannot be justified or excused by the operation of prerogative; because this is none of the cases, in which prerogative can operate: it cannot be justified or excused by the legislative authority of the colony; because that authority never has been, and, I presume, never will be given for any such purpose.

If I have proceeded hitherto, as I am persuaded I have, upon safe and sure ground, I can, with great confidence, advance a step farther, and say, that all attempts to alter the charter or constitution of that colony, unless by the authority of its own legislature, are violations of its rights, and illegal.

If those attempts are illegal, must not all force, employed to carry them into execution, be force employed against law, and without authority? The conclusion is unavoidable.

Have not British subjects, then, a right to resist such force—force acting without authority—force employed contrary to law—force employed to destroy the very existence of law and of liberty? They have, sir, and this right is secured to them both by the letter and the spirit of the British constitution, by which the measures and the conditions of their obedience are appointed. The British liberties, sir, and the means and the right of defending them, are not the grants of princes; and of what our princes never granted they surely can never deprive us.

I beg leave, here, to mention and to obviate some plausible but ill founded objections, that have been, and will be, held forth by our adversaries, against the principles of the resolution now before us. It will be observed, that those employed for bringing about the proposed alteration in the charter and constitution of the colony of Massachussetts Bay act by virtue of a commission for that purpose from his majesty: that all resistance of forces commissioned by his majesty, is resistance of his majesty's authority and government, contrary to the duty of allegiance, and treasonable. These objections will be displayed in their most specious colours: every artifice of chicanery and

sophistry will be put in practice to establish them: law authorities, perhaps, will be quoted and tortured to prove them. Those principles of our constitution, which were designed to preserve and to secure the liberty of the people, and, for the sake of that, the tranquillity of government, will be perverted on this, as they have been on many other occasions, from their true intention; and will be made use of for the contrary purpose of endangering the latter, and destroying the former. The names of the most exalted virtues, on one hand, and of the most atrocious crimes, on the other, will be employed in direct contradiction to the nature of those virtues, and of those crimes: and, in this manner, those who cannot look beyond names, will be deceived; and those, whose aim it is to deceive by names, will have an opportunity of accomplishing it. But, sir, this disguise will not impose upon us. We will look to things as well as to names: and, by doing so, we shall be fully satisfied, that all those objections rest upon mere verbal sophistry, and have not even the remotest alliance with the principles of reason or of law.

In the first place, then, I say, that the persons who allege, that those, employed to alter the charter and constitution of Massachussetts Bay, act by virtue of a commission from his majesty for that purpose, speak improperly, and contrary to the truth of the case. I say, they act by virtue of no such commission: I say, it is impossible they can act by virtue of such a commission. What is called a commission either contains particular directions for the purpose mentioned; or it contains no such particular directions. In neither case can those, who act for that purpose, act by virtue of a commission. In one case, what is called a commission is void; it has no legal existence; it can communicate no authority. In the other case, it extends not to the purpose mentioned. The latter point is too plain to be insisted on—I prove the former.

“Id rex potest,” says the law, “quod de jure potest.”³ The

³ 9 Rep. 123.

king's power is a power according to law. His commands, if the authority of Lord Chief Justice Hale ⁴ may be depended upon, are under the directive power of the law; and consequently invalid, if unlawful. Commissions, says my Lord Coke,⁵ are legal; and are like the king's writs; and none are lawful, but such as are allowed by the common law, or warranted by some act of parliament.

Let us examine any commission expressly directing those to whom it is given, to use military force for carrying into execution the alterations proposed to be made in the charter and constitution of Massachussetts Bay, by the foregoing maxims and authorities; and what we have said concerning it will appear obvious and conclusive. It is not warranted by any act of parliament; because, as has been mentioned on this, and has been proved on other occasions, any such act is void. It is not warranted, and I believe it will not be pretended that it is warranted, by the common law. It is not warranted by the royal prerogative; because, as has already been fully shown, it is diametrically opposite to the principles and the ends of prerogative. Upon what foundation, then, can it lean and be supported? Upon none. Like an enchanted castle, it may terrify those, whose eyes are affected by the magick influence of the sorcerers, despotism and slavery: but so soon as the charm is dissolved, and the genuine rays of liberty and of the constitution dart in upon us, the formidable appearance vanishes, and we discover that it was the baseless fabrick of a vision, that never had any real existence.

I have dwelt the longer upon this part of the objections urged against us by our adversaries; because this part is the foundation of all the others. We have now removed it; and they must fall of course. For if the force, acting for the purposes we have mentioned, does not act, and cannot act, by virtue of any com-

⁴ 1 Hale P. C. 43, 44. Vide on this head, 4 Bac. 149. 9 Parl. Hist. 168, 170, 179, 180. Vent. 63, 169. 3 Ins. 237, 238, 240.

⁵ 3 Ins. 165.

mission from his majesty, the consequence is undeniable, that it acts without his majesty's authority; that the resistance of it is no resistance of his majesty's authority; nor incompatible with the duties of allegiance.

And now, sir, let me appeal to the impartial tribunal of reason and truth—let me appeal to every unprejudiced and judicious observer of the laws of Britain, and of the constitution of the British government—let me appeal, I say, whether the principles on which I argue, or the principles on which alone my arguments can be opposed, are those which ought to be adhered to and acted upon—which of them are most consonant to our laws and liberties—which of them have the strongest, and are likely to have the most effectual, tendency to establish and secure the royal power and dignity.

Are we deficient in loyalty to his majesty? Let our conduct convict, for it will fully convict, the insinuation, that we are, of falsehood. Our loyalty has always appeared in the true form of loyalty—in obeying our sovereign according to law:⁶ let those, who would require it in any other form, know, that we call the persons who execute his commands, when contrary to law, disloyal and traitors. Are we enemies to the power of the crown? No, sir: we are its best friends: this friendship prompts us to wish, that the power of the crown may be firmly established on the most solid basis: but we know, that the constitution alone will perpetuate the former, and securely uphold the latter. Are our principles irreverent to majesty? They are quite the reverse: we ascribe to it perfection, almost divine. We say, that the king can do no wrong: we say, that to do wrong is the property, not of power, but of weakness. We feel oppression; and will oppose it; but we know—for our constitution tells us—

⁶ Rebellion being an opposition, not to persons, but authority, which is founded only in the constitution and laws of the government, those, whoever they be, who by force break through, and by force justify the violation of them, are truly and properly rebels. Puffend. 720, 721, notes.

that oppression can never spring from the throne. We must, therefore, search elsewhere for its source: our infallible guide will direct us to it. Our constitution tells us, that all oppression springs from the ministers of the throne. The attributes of perfection, ascribed to the king, are, neither by the constitution, nor in fact, communicable to his ministers. They may do wrong: they have often done wrong: they have been often punished for doing wrong.

Here we may discern the true cause of all the impudent clamour and unsupported accusations of the ministers and of their minions, that have been raised and made against the conduct of the Americans. Those ministers and minions are sensible, that the opposition is directed, not against his majesty, but against them: because they have abused his majesty's confidence, brought discredit upon his government, and derogated from his justice. They see the publick vengeance collected in dark clouds around them: their consciences tell them, that it should be hurled, like a thunder bolt, at their guilty heads. Appalled with guilt and fear, they skulk behind the throne. Is it disrespectful to drag them into publick view, and make a distinction between them and his majesty, under whose venerable name they daringly attempt to shelter their crimes? Nothing can more effectually contribute to establish his majesty on the throne, and to secure to him the affections of his people, than this distinction. By it we are taught to consider all the blessings of government as flowing from the throne; and to consider every instance of oppression as proceeding, which in truth is oftenest the case, from the ministers.

If, now, it is true, that all force employed for the purposes so often mentioned, is force unwarranted by any act of parliament; unsupported by any principle of the common law; unauthorized by any commission from the crown—that, instead of being employed for the support of the constitution and his majesty's government, it must be employed for the support of

oppression and ministerial tyranny—if all this is true—and I flatter myself it appears to be true—can any one hesitate to say, that to resist such force is lawful: and that both the letter and the spirit of the British constitution justify such resistance?

Resistance, both by the letter and the spirit of the British constitution, may be carried farther, when necessity requires it, than I have carried it. Many examples in the English history might be adduced, and many authorities of the greatest weight might be brought, to show, that when the king, forgetting his character and his dignity, has stepped forth, and openly avowed and taken a part in such iniquitous conduct as has been described; in such cases, indeed, the distinction above mentioned, wisely made by the constitution for the security of the crown, could not be applied; because the crown had unconstitutionally rendered the application of it impossible. What has been the consequence? The distinction between him and his ministers has been lost: but they have not been raised to his situation: he has sunk to theirs.

AN ADDRESS TO THE INHABITANTS OF THE COLONIES
SUBMITTED TO THE CONTINENTAL CONGRESS
1776

(Text according to No. 2 of Bibliography)

AN ADDRESS TO THE INHABITANTS OF THE COLONIES OF NEW HAMPSHIRE, MASSACHUSETTS BAY, RHODE ISLAND AND PROVIDENCE PLANTATIONS, CONNECTICUT, NEW YORK, NEW JERSEY, PENNSYLVANIA, THE COUNTIES OF NEWCASTLE, KENT AND SUSSEX ON DELAWARE, MARYLAND, VIRGINIA, NORTH CAROLINA, SOUTH CAROLINA AND GEORGIA FROM THEIR DELEGATES IN CONGRESS. [13 February, 1776.]

Friends and Countrymen—

History, we believe, cannot furnish an Example of a Trust, higher and more important than that, which we have received from your Hands. It comprehends in it every Thing that can rouse the Attention and interest the Passions of a People, who will not reflect Disgrace upon their Ancestors nor degrade themselves, nor transmit Infamy to their Descendants. It is committed to us at a Time when every Thing dear and valuable to *such* a People is in imminent Danger. This Danger arises from those, whom we have been accustomed to consider as our Friends; who really were so, while they continued friendly to themselves; and who will again be so, when they shall return to a just Sense of their own Interests. The Calamities, which threaten us, would be attended with a total Loss of those Constitutions, formed upon the venerable Model of British Liberty, which have been long our Pride and Felicity. To avert those *Calamities* we are under the disagreeable Necessity of making temporary Deviations from those *Constitutions*.

Such is the Trust reposed in us. Much does it import you and us, that it be executed with Skill and with Fidelity. That we have discharged it with Fidelity, we enjoy the Testimony of a good Conscience. How far we have discharged it with Skill must be determined by you, who are our Principals and Judges, to whom we esteem it our Duty to render an Account of our Conduct. To enable you to judge of it, as we would wish you to do, it is necessary that you should be made acquainted with the *Situation*, in which your Affairs have been placed; the *Principles*, on which we have acted; and the *Ends*, which we have kept and still keep in View.

That all Power was originally in the People—that all the Powers of Government are derived from them—that all Power, which they have not disposed of, still continues theirs—are Maxims of the *English Constitution*, which, we presume, will not be disputed. The Share of Power, which the King derives from the People, or, in other Words, the Prerogative of the Crown, is well known and precisely ascertained: It is the same in *Great Britain* and in the Colonies. The Share of Power, which the House of Commons derives from the People, is likewise well known: The Manner in which it is conveyed is by Election. But the House of Commons is not elected by the Colonists; and therefore, from *them* that Body can derive no Authority.

Besides; the Powers, which the House of Commons receives from its Constituents, are entrusted by the Colonies to their Assemblies in the several Provinces. Those Assemblies have Authority to propose and assent to Laws for the Government of their Electors, in the same Manner as the House of Commons has Authority to propose and assent to Laws for the Government of the Inhabitants of *Great Britain*. Now the same collective Body cannot delegate the same Powers to distinct representative Bodies. The undeniable Result is, that the *House of*

Commons neither has nor can have any Power deriv'd from the *Inhabitants of these Colonies*.

In the Instance of imposing *Taxes*, this Doctrine is clear and familiar: It is true and just in every *other* Instance. If it would be incongruous and absurd, that the same Property should be liable to be taxed by two Bodies independent of each other; would less Incongruity and Absurdity ensue, if the same Offense were to be subjected to different and perhaps inconsistent Punishments? Suppose the Punishment directed by the Laws of one Body to be Death, and that directed by those of the other Body be Banishment for Life; how could both Punishments be inflicted?

Though the Crown possesses the same Prerogative over the Colonies, which it possesses over the Inhabitants of *Great Britain*: Though the Colonists delegate to their Assemblies the same Powers which our Fellow Subjects in *Britain* delegate to the House of Commons: Yet by some inexplicable Mystery in Politics, which is the Foundation of the odious System that we have so much Reason to deplore, *additional* Powers over you are ascribed to the Crown, as a Branch of the British Legislature: And the House of Commons—a *Body which acts solely by derivative Authority*—is supposed entitled to exert over you an Authority, which *you* cannot *give*, and which *it* cannot *receive*.

The Sentence of universal Slavery gone forth against you is; *that the British Parliament have Power to make Laws, WITHOUT YOUR CONSENT, building you in ALL Cases whatever*. Your Fortunes, your Liberties, your Reputations, your Lives, every Thing that can render you and your Posterity happy, all are the Objects of the Laws: All must be enjoyed, impaired or destroyed as the Laws direct. And are you the Wretches, who have Nothing that you *can* or *ought* to call *your own*? Were all the rich Blessings of Nature, all the Bounties of indulgent Provi-

dence poured upon you, not for your own Use; but for the Use of those, upon whom neither Nature nor Providence hath bestowed Qualities or Advantages superior to yours?

From this Root of Bitterness numerous are the Branches of Oppression that have sprung. Your most undoubted and highest-priz'd Rights have been invaded: Heavy and unnecessary Burthens have been imposed on you: Your Interests have been neglected, and sometimes wantonly sacrificed to the Interests, and even to the Caprice of others. When you felt, for your Enemies have not yet made any Laws to divest you of feeling, Uneasiness under your Grievances, and expressed it in the natural Tone of Complaint; your Murmurs were considered and treated as the Language of Faction; and your Uneasiness was ascribed to a restive Disposition, impatient of Controul.

In proportion, however, as your Oppressions were multiplied and increased, your Opposition to them became firm and vigorous. Remonstrances succeeded Petitions: A Resolution carried into Effect, not to import Goods from *Great Britain* succeeded both. The Acts of Parliament then complained of were in Part, repealed. Your Good-Humour and unsuspecting Fondness returned. Short—alas! *too* short—was the Season allowed for indulging them. The former System of Rigour was renewed.

The Colonies, wearied with presenting fruitless Supplications and Petitions *separately*; or prevented, by arbitrary and abrupt Dissolutions of their Assemblies, from using even those fruitless Expedients for Redress, determined to *join* their Counsels and their Efforts. Many of the Injuries flowing from the unconstitutional and ill-advised Acts of the British Legislature, affected all the Provinces equally; and even in those Cases, in which the Injuries were confined, by the Acts, to one or to a few, the *Principles*, on which they were made, extended to all. If common Rights, common Interests, common Dangers and common Sufferings are Principles of Union, what could be more natural than the Union of the Colonies?

Delegates authorised by the several Provinces from Nova Scotia to Georgia to represent them and act in their Behalf, met in GENERAL CONGRESS.

It has been objected, that this Measure was unknown to the Constitution; that the Congress was, of Consequence, an illegal Body; and that its Proceedings could not, in any Manner, be recognised by the Government of Britain. To those, who offer this Objection, and have attempted to vindicate, by its supposed Validity, the Neglect and Contempt, with which the Petition of that Congress to his Majesty was treated by the Ministry, we beg Leave, in our Turn, to propose, that they would explain the Principles of the Constitution, which warranted the *Assembly of the Barons at RUNNINGMEDE*, when *MAGNA CHARTA* was signed, the *Convention-Parliament* that recalled Charles 2d, and the *Convention of Lords and Commons* that placed King William on the Throne. When they shall have done this, we shall perhaps, be able to apply their Principles to prove the Necessity and Propriety of a Congress.

But the Objections of those, who have done so much and aimed so much against the Liberties of America, are not confined to the *Meeting* and the *Authority* of the Congress: They are urged with equal Warmth against the *Views* and *Inclinations* of those who composed it. We are told, in the Name of Majesty itself, "that the Authors and Promoters of this *desperate Conspiracy*", as those who have framed his Majesty's Speech are pleased to term our *laudable Resistance*; "have, in the Conduct of it, derived great Advantage from the Difference of his Majesty's Intentions and theirs. That they meant only to amuse by vague Expressions of Attachment to the Parent State, and the strongest Protestations of Loyalty to the King, whilst they were preparing for a general Revolt. That on the Part of his Majesty and the Parliament, the Wish was rather to reclaim than to subdue." It affords us some Pleasure to find that the Protestations of Loyalty to his Majesty, which have been made,

are allowed to be strong; and that Attachment to the Parent State is owned to be expressed. Those Protestations of Loyalty and Expressions of Attachment ought, by every Rule of Candour, to be presumed to be sincere, unless Proofs evincing their Insincerity can be drawn from the Conduct of those who used them.

In examining the Conduct of those who directed the Affairs of the Colonies at the Time when, it is said, they were preparing for a general Revolt, we find it an easy Undertaking to shew, that they merited no Reproach from the British Ministry by making any Preparations *for that Purpose*. We wish it were as easy to shew, that they merited no Reproach from their Constituents, by neglecting the necessary Provisions *for their Security*. Has a single Preparation been made, which has not been found requisite for our Defense? Have we not been attacked in Places where fatal Experience taught us, we were not sufficiently prepared for a successful Opposition? On which Side of this unnatural Controversy was the *ominous Intimation* first given, that it must be decided by Force? Were Arms and Ammunition imported into *America*, before the Importation of them was prohibited? What Reason can be assigned for this Prohibition, unless it be this, that those who made it had determined upon such a System of Oppression, as they knew, would *force* the Colonies into Resistance? And yet, they "wished only to reclaim!"

The Sentiments of the Colonies, expressed in the Proceedings of their Delegates assembled in 1774 were far from being disloyal or disrespectful. Was it disloyal to offer a Petition to your Sovereign? Did your still anxious Impatience for [an] answer, which your *Hopes*, founded only on your *Wishes*, as you too soon experienced, flattered you would be a gracious one—did this Impatience indicate a Disposition only to amuse? Did the keen Anguish, with which the Fate of the Petition filled your Breasts, betray an Inclination to avail yourselves of the In-

dignity with which you were treated, for forwarding favourite Designs of Revolt?

Was the Agreement not to import Merchandise from *Great Britain* or *Ireland*; nor after the tenth Day of September last, to export our Produce to those Kingdoms and the *West Indies*—was this a disrespectful or an hostile Measure? Surely we have a Right to withdraw or to continue our own Commerce. Though the British Parliament have exercised a Power of *directing* and *restraining* our Trade; yet, among all their extraordinary Pretensions, we recollect no Instance of their attempting to *force* it contrary to our Inclinations. It was well known, before this Measure was adopted, that it would be detrimental to our own Interest, as well as to that of our fellow-Subjects. We deplored it on both Accounts. We deplored the Necessity that produced it. But we were willing to sacrifice our Interest to any probable Method of regaining the Enjoyment of those Rights, which, by Violence and Injustice, had been infringed.

Yet even this peaceful Expedient, which Faction surely never suggested, has been represented, and by high Authority too, as a seditious and unwarrantable Combination. We are, we presume, the first Rebels and Conspirators, who commenced their Conspiracy and Rebellion with a System of Conduct, immediately and directly frustrating every Aim, which Ambition or Rapaciousness could propose: Those, whose Fortunes are desperate, may upon slight Evidence be charged with desperate Designs: But how improbable is it, that the Colonists, who have been happy, and have known their Happiness in the quiet Possession of their Liberties; who see no Situation more to be desired than that, in which, till lately, they have been placed; and whose warmest Wish is to be re-instaled in the Enjoyment of that Freedom, which they claim and are entitled to as Men and as British Subjects—how improbable it is that *such* would, without any Motives that could tempt even the most *profligate* Minds to

Crimes, plunge themselves headlong into all the Guilt and Danger and Distress with which those that endeavour to overturn the Constitution of their Country are always surrounded and frequently overwhelmed?

The humble unaspiring Colonists asked only for "Peace, Liberty and Safety". This, we think, was a reasonable Request: Reasonable as it was, it has been refused. Our ministerial Foes, dreading the Effects, which our commercial Opposition might have upon their favourite Plan of reducing the Colonies to Slavery, were determined not to hazard it upon that Issue. They employed military Force to carry it into Execution. Opposition of Force by Force, or unlimited Subjection was now our only Alternative. Which of them did it become Freemen determined never to surrender that Character, to chuse? The Choice was worthily made. We wish for Peace—we wish for Safety: But we will not, to obtain either or both of them, part with our Liberty. The sacred Gift descended to us from our Ancestors: We cannot dispose of it: We are bound by the strongest Ties to transmit it, as we have received it, pure and inviolate to our Posterity.

We have taken up Arms in the best of Causes. We have adhered to the virtuous Principles of our Ancestors, who expressly stipulated, in their Favour, *and in ours*, a Right to resist every Attempt upon their Liberties. We have complied with our Engagements to our Sovereign. He should be the *Ruler* of a *free* People: We will not, as far as his Character depends upon us, permit him to be degraded into a *Tyrant* over *Slaves*.

Our Troops are animated with the Love of Freedom. They have fought and bled and conquered in the Discharge of their Duty as good Citizens as well as brave Soldiers. Regardless of the Inclemency of the Seasons, and of the Length and Fatigue of the March, they go, with Chearfulness, wherever the Cause of Liberty and their Country requires their Service. We confess that they have not the Advantages arising from Experience and Discipline: But Facts have shewn, that native Courage warmed

with Patriotism, is sufficient to counterbalance these Advantages. The Experience and Discipline of our Troops will daily increase: Their Patriotism will receive no Diminution: The longer those, who have forced us into this War, oblige us to continue it, the more formidable we shall become.

The Strength and Resources of *America* are not confined to Operations *by Land*. She can exert herself likewise *by Sea*. Her Sailors are hardy and brave: She has all the Materials for Ship-building: Her Artificers can Work them into Form. We pretend not to vie with the Royal Navy of England though that Navy had *its Beginnings*: But still we may be able in a great Measure to defend our own Coasts, and may intercept, as we have been hitherto successful in doing, Transports and Vessels laden with Stores and Provisions.

Possessed of so many Advantages; favoured with the Prospect of so many more; Threatened with the Destruction of our constitutional Rights; cruelly and illiberally attacked, because we will not subscribe to our own Slavery; ought we to be animated with Vigour, or to sink into Despondency? When the Forms of our Governments are, by those entrusted with the Direction of them, perverted from their original Design; ought we to submit to this Perversion? Ought we to sacrifice the *Forms*, when the Sacrifice becomes necessary for preserving the *Spirit* of our Constitution? Or ought we to neglect and neglecting, to lose the Spirit by a superstitious Veneration for the Forms? We regard those Forms, and wish to preserve them as long as we can consistently with higher Objects: But much more do we regard essential Liberty, which, at all Events, we are determined not to lose, but with our Lives. In contending for this Liberty, we are willing to go through good Report, and through evil Report.

In our present Situation, in which we are called to oppose an Attack upon your Liberties, made under bold Pretensions of Authority from that Power, to which the executive Part of

Government is, in the ordinary Course of affairs, committed—in the Situation, every Mode of Resistance, though directed by Necessity and by Prudence, and authorised by the Spirit of the Constitution, will be exposed to plausible Objections drawn from its Forms. Concerning such Objections, and the Weight that may be allowed to them, we are little solicitous. It will not discourage us to find ourselves represented as “labouring to enflame the Minds of the People of America, and openly avowing Revolt, Hostility and Rebellion.” We deem it an Honour to “have raised Troops, and collected a naval Force”; and, *cloathed with the sacred Authority of the People, from WHOM all LEGITIMATE AUTHORITY proceeds* “to have exercised legislative, executive and judicial Powers.” For what Purposes were those Powers instituted? For your Safety and Happiness. You and the World will judge whether those Purposes have been best promoted by us; or by those who claim the Powers, which they charge us with assuming.

But while we feel no Mortification at being misrepresented with Regard to the *Measures* employed by us for accomplishing the great Ends, which you have appointed us to pursue; we cannot sit easy under an Accusation, which charges us with laying aside those *Ends*, and endeavouring to accomplish *such as are very different*. We are accused of carrying on the War “for the Purpose of establishing an independent Empire.”

We disavow the Intention. We declare, that what we aim at, and what we are entrusted by you to pursue, *is the Defence and the Re-establishment of the constitutional Rights of the Colonies*. Whoever gives impartial Attention to the Facts, we have already stated, and to the Observations we have already made, must be fully convinced that all the Steps, which have been taken by us in this unfortunate Struggle, can be accounted for as rationally and as satisfactorily by supposing that the Defence and Re-establishment of their Rights were the Objects which the Colonists and their Representatives had in View; as

by supposing that an independent Empire was their Aim. Nay, we may safely go farther and affirm, without the most distant Apprehension of being refuted, that many of those steps can be accounted for rationally and satisfactorily only upon the former Supposition, and cannot be accounted for, in that Manner, upon the latter. The numerous Expedients that were tried, though fruitlessly, for avoiding Hostilities: The visible and unfeigned Reluctance and Horrour, with which we entered into them: The Caution and Reserve, with which we have carried them on: The Attempts we have made by petitioning the Throne and by every other Method, which might probably, or could possibly be of any Avail for procuring an accommodation—These are not surely the usual Characteristics of Ambition.

In what Instance have we been the Aggressors? Did our Troops take the Field before the ministerial Forces began their hostile March to *Lexington* and *Concord*? Did we take Possession, or did we form any Plan for taking Possession of *Canada*, before we knew that it was a Part of the ministerial System to pour the *Canadians* upon our Frontiers? Did we approach the *Canadians*, or have we treated them as Enemies? Did we take the Management of the *Indian* Tribes into our Hands, before we were well assured that the Emissaries of Administration were busy in persuading them to strike us? When we treated with them, did we imitate the barbarous Example? Were not our Views and Persuasions confined to keeping them in a State of Neutrality? Did we seize any Vessel of our Enemies, before our Enemies had seised some of ours? Had we yet seised any, except such as were employed in the Service of Administration, and in supplying those that were in actual Hostilities against us? Cannot our whole Conduct be reconciled to *Principles and Views of Self-Defence*? Whence then the uncandid Imputation of *aiming at an independent Empire*?

Is no regard to be had to the Professions and Protestations made by us, on so many different Occasions, of Attachment to

Great Britain, of Allegiance to his Majesty; and of Submission to his Government upon the Terms, on which the Constitution points it out as a Duty, and on which alone a *British Sovereign* has the Right to demand it?

When the Hostilities commenced by the ministerial Forces in Massachusetts Bay, and the imminent Dangers threatening the other Colonies rendered it absolutely necessary that they should be put into a State of Defence—even on that Occasion, we did not forget our Duty to his Majesty, and our Regard for our fellow Subjects in Britain. Our words are these: “But as we most ardently wish for a Restoration of the Harmony formerly subsisting between our Mother-Country and these Colonies, the Interruption of which must at all Events, be exceedingly injurious to both Countries: Resolved, that with a sincere Design of contributing, by all Means in our Power, not incompatible with a just Regard for the undoubted Rights and true Interests of these Colonies, to the Promotion of this most desirable Reconciliation, an humble and dutiful Address be presented to his Majesty.”

If the Purposes of establishing an independent Empire has lurked in our Breasts, no fitter Occasion could have been found for giving Intimations of them, than in our Declaration setting forth the Causes and Necessity of our taking up Arms. Yet even there no Pretence can be found for fixing such an Imputation on us. “Lest this Declaration should disquiet the Minds of our Friends and fellow Subjects in any Part of the Empire, we assure them that we mean not to dissolve that Union, which has so long and so happily subsisted between us, and which we sincerely wish to see restored. Necessity has not yet driven us into that desperate Measure, or induced us to excite any other Nation to war against them. We have not raised Armies with the ambitious Designs of separating from Great Britain, and establishing independent States.” Our Petition to the King has the following Asseveration: “By such Arrangements as your Maj-

esty's Wisdom can form for collecting the united Sense of your American People, we are convinced your Majesty would receive such satisfactory Proofs of the Disposition of the Colonists towards their Sovereign and the Parent State, that the wished for Opportunity would be soon restored to them, of evincing the Sincerity of their Professions by every Testimony of Devotion becoming the most dutiful Subjects and the most affectionate Colonists." In our Address to the Inhabitants of Great Britain, we say: "We are accused of aiming at Independence: But how is this Accusation supported? By the Allegations of your Ministers, not by our Actions. Give us leave, most solemnly to assure you, that we have not yet lost Sight of the Object we have ever had in View, a Reconciliation with you on constitutional Principles, and a Restoration of that friendly Intercourse, which to the Advantage of both we till lately maintained."

If we wished to detach you from your Allegiance to his Majesty, and to wean your Affections from a Connexion with your fellow-Subjects in Great Britain, is it likely that we would have taken so much Pains, upon every proper Occasion, to place those Objects before you in the most agreeable Points of View?

If any equitable Terms of Accommodation had been offered us, and we had rejected them, there would have been some Foundation for the Charge that we endeavoured to establish an independent Empire. But no Means have been used either by Parliament or by Administration for the Purpose of bringing this Contest to a Conclusion besides Penalties directed by Statutes, or Devastations occasioned by War. Alas! how long will Britons forget that Kindred-Blood flows in your Veins? How long will they strive, with hostile Fury to sluice it out from Bosoms that have already bled in their Cause; and, in their Cause, would still be willing to pour out what remains, to the last precious Drop?

We are far from being insensible of the Advantages, which have resulted to the Colonies as well as to Britain from the Con-

nexion which has hitherto subsisted between them: We are far from denying them, or wishing to lessen the Ideas of their Importance. But the Nature of this Connexion, and the Principles, on which it was originally formed and on which alone it can be maintained, seem unhappily to have been misunderstood or disregarded by those, who laid or conducted the late destructive Plan of Colony-Administration. It is a Connexion founded upon mutual Benefits; upon Religion, Laws, Manners, Customs and Habits common to both Countries. Arbitrary Exertions of Power on the Part of Britain, and servile Submission on the [part of the] Colonies, if the Colonies should ever become degenerate enough to [accept] it, would immediately rend every generous Bond asunder. An intimate Connexion between Freemen and Slaves cannot be continued without Danger and, at last, Destruction to the former. Should your Enemies be able to reduce you to Slavery, the baneful Contagion would spread over the whole Empire. We verily believe that the Freedom, Happiness, and Glory of Great Britain, and the Prosperity of his Majesty and his Family depend upon the Success of your Resistance. You are now expending your Blood, and your Treasure in promoting the Welfare and the true Interests of your Sovereign and your fellow-Subjects in Britain, in Opposition to the most dangerous Attacks that have been ever made against them.

The Ideas of deriving Emolument to the Mother Country by taxing you, and depriving you of your Constitutions and Liberties were not introduced till lately. The Experiments, to which those Ideas have given Birth, have proved disastrous: The Voice of Wisdom calls loudly that they should be laid aside. Let them not, however, be removed from View. They may serve as Beacons to prevent future Shipwrecks.

Britain and these Colonies have been Blessings to each other. Sure we are, that they might continue to be so. Some salutary System might certainly be devised, which would remove from both Sides, Jealousies that are ill-founded, and Causes of Jeal-

ousies that are well-founded; which would restore to both Countries those important Benefits that Nature seems to have intended them reciprocally to confer and to receive; and which would secure the Continuance and the Encrease of those Benefits to numerous succeeding Generations. That such a System may be formed is our ardent Wish.

But as such a System must affect the Interest of the Colonies as much as that of the Mother-Country, why should the Colonies be excluded from a Voice in it? Should not, to say the least upon this Subject, their Consent be asked and obtained as to the *general Ends*, which it ought to be calculated to answer? Why should not its Validity depend upon us as well as upon the Inhabitants of Great Britain? No Disadvantage will result to them: An important Advantage will result to [us]. We shall be affected by no Laws, the Authority of which, as far as they regard us, is not *founded on our own Consent*. This Consent may be expressed as well by a solemn Compact, as if the Colonists, by their Representatives, had an immediate Voice in passing the Laws. In a Compact we would *concede* liberally to Parliament: For the *Bounds* of our Concessions would be known.

We are too much attached to the English Laws and Constitution, and know too well their happy Tendency to diffuse Freedom, Prosperity and Peace wherever they prevail, to desire an independent Empire. If one Part of the Constitution be pulled down, it is impossible to foretell whether the other Parts of it may not be shaken, and, perhaps, overthrown. It is a Part of our Constitution to be under Allegiance to the Crown, Limited and ascertained as the Prerogative is, the Position—*that a King can do no wrong*—may be founded in *Fact* as well as in *Law*, if you are not wanting to yourselves.

We trace your Calamities to the House of Commons. *They* have undertaken to *give* and *grant* your Money. From a supposed virtual Representation in *their* House it is argued, that

you ought to be bound by the Acts of the British Parliament in all Cases whatever. This is no Part of the Constitution. This is the Doctrine, to which we will never subscribe our Assent: This is the Claim, to which we adjure you, as you tender your own Freedom and Happiness, and the Freedom and Happiness of your Posterity, never to submit. The same Principles, which directed *your Ancestors* to oppose the exorbitant and dangerous Pretensions of the Crown, should direct *you* to oppose the no less exorbitant and dangerous Claims of the House of Commons. Let all Communication of despotic Power through that Channel be cut off, and your Liberties will be safe.

Let neither our Enemies nor our Friends make improper Inferences from the Solicitude, which we have discovered to remove the Imputation of aiming to establish an independent Empire. Though an independent Empire is not our *Wish*; it may—let your Oppressors attend—it may be the Fate of our Countrymen and ourselves. It is in the Power of your Enemies to render Independency or Slavery your and our Alternative. Should we—will you, in such an Event, hesitate a Moment about the Choice? Let those, who drive us to it, answer to their King and to their Country for the Consequences. We are *desirous* to continue Subjects: But we are *determined* to continue Freemen. We shall deem ourselves bound to renounce; and, we hope, you will follow our Example in renouncing the *former* Character whenever it shall become incompatible with the *latter*.

While we shall be continued by you in the very important Trust, which you have committed to us, we shall keep our Eyes constantly and steadily fixed upon the Grand Object of the Union of the Colonies—THE RE-ESTABLISHMENT AND SECURITY OF THEIR CONSTITUTIONAL RIGHTS. Every measure that we employ shall be directed to the Attainment of this great End: No Measure, necessary, in our Opinion, for attaining it, shall be declined. If any such Measure should, against our principal Intention, draw the Colonies into Engagements that may sus-

pend or dissolve their Union with their fellow-Subjects in Great Britain, we shall lament the Effect; but shall hold ourselves justified in adopting the Measure. That the Colonies may continue connected, as they have been, with Britain, is our second Wish: Our first is—THAT AMERICA MAY BE FREE.

CONSIDERATIONS ON THE POWER TO INCORPORATE
THE BANK OF NORTH AMERICA
1785

(Text from No. 16 of Bibliography)

CONSIDERATIONS,¹ ON THE POWER TO INCORPORATE THE BANK OF NORTH AMERICA

An attack is made on the credit and institution of the Bank of North America. Whether this attack is justified by the principles of law and sound policy, is a natural subject of inquiry. The inquiry is as necessary and interesting, as it is natural: for, though some people represent the bank as injurious and dangerous, while others consider it as salutary and beneficial to the community, all view it as an object of high importance; deserving and demanding the publick attention.

In the investigation of this subject, it will be requisite to discuss some great and leading questions concerning the constitution of the United States, and the relation which subsists between them and each particular state in the Union. Perhaps it is to be wished that this discussion had not been rendered necessary; and that those questions had rested some time longer among the *arcana imperii*: but they are now presented to the publick; and the publick should view them with firmness, with impartiality, and with all the solicitude befitting such a momentous occasion.

A gentleman, who had the best opportunities of observing, and who possesses the best talents for judging on the subject, informs his fellow citizens officially, that "it may be not only as-

¹ The publication of these considerations was occasioned by a bill, introduced into the legislature of Pennsylvania, to repeal an act of assembly passed in the year 1782, by which a charter of incorporation had been granted to the Bank of North America. The bill was passed into a law, in September, 1785. [*Editorial note of Bird Wilson*]

served, but demonstrated, that, without the establishment of the national bank, the business of the department of finance could not have been performed" in the late war.

The millennium is not yet come. War, with all the horrors and miseries in his train, may revisit us. The finances may again be deranged: "publick credit may, again, be at an end: no means may be afforded adequate to the publick expenses." Is it wise or politick to deprive our country, in such a situation, of a resource, which happy experience has shown to be of such essential importance? Will the citizens of the United States be encouraged to embark their fortunes on a similar bottom in a future war, by seeing the vessel, which carried us so successfully through the last, thrown aside, like a useless hulk, upon the return of peace?

It will not be improper to recal to our remembrance the origin, the establishment, and the proceedings of the Bank of North America.

In May, 1781, the superintendant of finance laid before congress a plan of a bank. On the 26th of that month, congress passed the following resolution concerning it.

"Resolved, That congress do approve of the plan for establishing a national bank in these United States, submitted to their consideration by Mr. Robert Morris, the 17th May, 1781, and that they will promote and support the same by such ways and means, from time to time, as may appear necessary for the institution, and consistent with the publick good.

"That the subscribers to the said bank shall be incorporated, agreeably to the principles and terms of the plan, under the name of 'The President, Directors, and Company of the Bank of North America,' so soon as the subscription shall be filled, the directors and president chosen, and application made to congress for that purpose, by the president and directors elected.

"Resolved, That it be recommended to the several States, by proper laws for that purpose, to provide that no other bank or

bankers shall be established or permitted within the said states respectively, during the war.

“Resolved, That the notes hereafter to be issued by the said bank, payable on demand, shall be receivable in payment of all taxes, duties, and debts, due or that may become due or payable to the United States.

“Resolved, That congress will recommend to the several legislatures to pass laws, making it felony without benefit of clergy, for any person to counterfeit bank notes, or to pass such notes, knowing them to be counterfeit; also making it felony without benefit of clergy, for any president, inspector, director, officer, or servant of the bank, to convert any of the property, money, or credit of the said bank to his own use, or in any other way to be guilty of fraud or embezzlement, as officers or servants of the bank.”

Under these resolutions a subscription was opened for the national bank: this subscription was not confined to Pennsylvania: the citizens of other states trusted their property to the publick faith; and before the end of December, 1781, the subscription was filled, “from an expectation of a charter of incorporation from congress.” Application was made to congress by the president and directors, then chosen, for an act of incorporation. “The exigencies of the United States rendered it indispensably necessary that such an act should be immediately passed.” Congress, at the same time that they passed the act of incorporation, recommended to the legislature of each state, to pass such laws as they might judge necessary for giving its ordinance its full operation, agreeably to the true intent and meaning thereof, and according to the recommendations contained in the resolution of the 26th day of May preceding.

The bank immediately commenced its operations. Its seeds were small, but they were vigorous. The sums paid in by individuals upon their subscriptions did not amount in the whole, to seventy thousand dollars. The sum invested by the United

States, in bank stock, amounted to something more than two hundred and fifty thousand dollars: but this sum may be said to have been paid in with one hand and borrowed with the other; and before the end of the first three months, farther sums were advanced to the United States, and an advance was made to this state. Besides, numerous accommodations were afforded to individuals. Little was it then imagined that the bank would ever be represented as unfriendly to circulation. It was viewed as the source and as the support of credit, both private and publick; as such, it was hated and dreaded by the enemies of the United States: as such, it was loved and fostered by their friends.

Pennsylvania, distinguished on numerous occasions by her faithful and affectionate attachment to federal principles, embraced, in the first session of her legislature after the establishment of the bank, the opportunity of testifying her approbation of an act, which had been found to be indispensably necessary. Harmonizing with the sentiments and recommendations of the United States, the assembly passed an act,² “for preventing and punishing the counterfeiting of the common seal, bank bills, and bank notes, of the president, directors, and company of the Bank of North America.” In the preamble to this act, which, according to the constitution of this state, expresses the reasons and motives for passing it, the “necessity” of taking “effectual measures for preventing and punishing frauds and cheats which may be put upon the president, directors, and company of the Bank of North America,” is explicitly declared by the legislature.

The sentiments and conduct of other states, respecting the establishment of the national bank by congress, were similar to those of Pennsylvania. The general assembly of Rhode Island and Providence Plantations³ made it felony, without benefit of clergy, “to counterfeit any note or notes issued, or to be issued, from the Bank of North America, as approved and *established*

² 18th of March, 1782.

³ January Sessions, 1782.

by the United States in Congress assembled." The state of Connecticut enacted,⁴ that a tax should be laid, payable in money, or "notes issued by the directors of the national bank, *established* by an ordinance of the United States in congress assembled." By a law of Massachusetts, the subscribers to the national bank, approved of by the United States, were "incorporated, on the behalf of that commonwealth, by the name of the president, directors, and company of the Bank of North America, according to the terms of the ordinance to incorporate the said subscribers, passed by the United States in congress assembled on the thirty-first day of December, 1781." The same law further enacts, "that all notes or bills, which have been or shall be issued by, for, or in the name of the said president, directors, and company, and payable on demand, shall be receivable in the payment of all taxes, debts and duties, due or that may become due, or payable to, or for account of, the said United States." In the preamble of this law, the legislature declares that "a national bank is of great service, as well to the publick as to individuals."

The president and directors of the bank had a delicate and a difficult part to act. On one hand, they were obliged to guard against the malice and exertions of their enemies: on the other, it was incumbent on them to soothe the timidity of some of their friends. The credit of a bank, as well as all other credit, depends on opinion. Opinion, whether well or ill founded, produces, in each case, the same effects upon conduct. Some thought that an act of incorporation from the legislature of this state would be beneficial; none apprehended that it could ever be hurtful to the national bank. Prudence, therefore, and a disposition, very natural in that season of doubt and diffidence, to gratify the sentiment, and even the prejudices, of such as might become subscribers or customers to the bank, directed an application to the assembly for "a charter, similar to that granted by the United States in congress assembled." But though the direc-

⁴ 10th January, 1782.

tors were willing to avail themselves of encouragement from every quarter, they meant not to relinquish any of their rights, or to change the foundation on which they rested. They made their application in their *corporate* character. They expressly mentioned to the assembly, that the United States in congress assembled had granted to the bank a charter of incorporation, and that the institution was to be carried on under their immediate auspices. The legislature thought that it was proper and reasonable to grant ⁵ the request of the *president and directors of the Bank of North America*; and assigned, as a reason for the act, "that the United States in congress assembled, from a conviction of the support which the finances of the United States would receive from the establishment of a *national bank*, passed an ordinance to incorporate the subscribers for this purpose, by the name and style of the president, directors, and company of the Bank of North America."

The first clause of the law enacts, that "those who are, and those who shall become subscribers to the said bank, be and forever hereafter shall be, a corporation and body politick, to all intents and purposes."

It is further enacted, that "the said corporation be, and shall be forever hereafter, able and capable in law to do and execute all and singular matters and things, that to them shall or may appertain to do."

To show, in the most striking light, the kind sentiments of the legislature towards the institution, it is further enacted, that "this act shall be construed and taken most favorably and beneficially for the said corporation."

On these facts and proceedings, two questions of much national importance present themselves to our view and examination.

I. Is the Bank of North America legally and constitutionally

⁵ 1st of April, 1782.

instituted and organized, by the charter of incorporation granted by the United States in congress assembled?

II. Would it be wise or politick in the legislature of Pennsylvania, to revoke the charter which it has granted to the institution?

The discussion of these two questions will naturally lead us to the proper conclusions concerning the validity and the utility of the bank.

I. Had the United States in congress assembled a legal and constitutional power to institute and organize the Bank of North America, by a charter of incorporation?

The objection, under this head, will be—that the articles of confederation express all the powers of congress, that in those articles no power is delegated to that body to grant charters of incorporation, and that, therefore, congress possess no such power.

It is true, that, by the second article of the confederation, “each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not, by the confederation, *expressly* delegated to the United States in congress assembled.”

If, then, any or each of the states possessed, previous to the confederation, a power, jurisdiction, or right, to institute and organize, by a charter of incorporation a bank for North America; in other words—commensurate to the United States; such power, jurisdiction, and right, unless expressly delegated to congress, cannot be legally or constitutionally exercised by that body.

But, we presume, it will not be contended, that any or each of the states could exercise any power or act of sovereignty extending over all the other states, or any of them; or, in other words, incorporate a bank, commensurate to the United States.

The consequence is, that this is not an act of sovereignty, or a power, jurisdiction, or right, which, by the second article of the confederation, must be expressly delegated to congress, in order to be possessed by that body.

If, however, any person shall contend that any or each of the states can exercise such an extensive power or act of sovereignty as that above mentioned; to such person we give this answer—The state of Massachusetts has exercised such power and act: it has incorporated the Bank of North America. But to pursue my argument.

Though the United States in congress assembled derive *from the particular states* no power, jurisdiction, or right, which is not expressly delegated by the confederation, it does not thence follow, that the United States in congress have *no other* powers, jurisdiction, or rights, than those delegated by the particular states.

The United States have general rights, general powers, and general obligations, not derived from any particular states, nor from all the particular states, taken separately; but resulting from the union of the whole: and, therefore, it is provided, in the fifth article of the confederation, “that for the more convenient management of the *general interests* of the United States, delegates shall be annually appointed to meet in congress.”

To many purposes, the United States are to be considered as one undivided, independent nation; and as possessed of all the rights, and powers, and properties, by the law of nations incident to such.

Whenever an object occurs, to the direction of which no particular state is competent, the management of it must, of necessity, belong to the United States in congress assembled. There are many objects of this extended nature. The purchase, the sale, the defence, and the government of lands and countries, not within any state, are all included under this description. An

institution for circulating paper, and establishing its credit over the whole United States, is naturally ranged in the same class.

The act of independence was made before the articles of confederation. This act declares, that "*these United Colonies*," (not enumerating them separately) "are free and independent states; and that, as free and independent states, *they* have full power to do *all* acts and things which independent states may, of right, do."

The confederation was not intended to weaken or abridge the powers and rights, to which the United States were previously entitled. It was not intended to transfer any of those powers or rights to the particular states, or any of them. If, therefore, the power now in question was vested in the United States before the confederation; it continues vested in them still. The confederation clothed the United States with many, though, perhaps, not with sufficient powers: but of none did it disrobe them.

It is no new position, that rights may be vested in a political body, which did not previously reside in any or in all the members of that body. They may be derived solely from the union of those members.⁶ "The case," says the celebrated Burlamaqui, "is here very near the same as in that of several voices collected together, which, by their union, produce a harmony, that was not to be found separately in each."

A number of unconnected inhabitants are settled on each side of a navigable river, it belongs to none of them; it belongs not to them all, for they have nothing in common: let them unite; the river is the property of the united body.

The arguments drawn from the political associations of individuals into a state will apply, with equal force and propriety, to a number of states united by a confederacy.

New states must be formed and established: their extent and boundaries must be regulated and ascertained. How can this be done, unless by the United States in congress assembled?

⁶ 2 Burl. 42.

States are corporations or bodies politick of the most important and dignified kind.

Let us now concentre the foregoing observations, and apply them to the incorporation of the Bank of North America by congress.

By the civil law, corporations seem to have been created by the mere and voluntary association of their members, provided such convention was not contrary to law.⁷

By the common law, something more is necessary—All the methods whereby corporations exist are, for the most part, reducible to that of the king's letters patent, or charter of incorporation.⁸

From this it will appear that the creation of a corporation is, by the common law, considered as the act of the executive rather than of the legislative powers of government.

Before the revolution, charters of incorporation were granted by the proprietaries of Pennsylvania, under a derivative authority from the crown, and those charters have been recognised by the constitution and laws of the commonwealth since the revolution.

From analogy, therefore, we may justly infer, that the United States in congress assembled, possessing the executive powers of the union, may, in virtue of such powers, grant charters of incorporation for accomplishing objects that comprehend the general interests of the United States.

But the United States in congress assembled possess, in many instances, and to many purposes, the legislative as well as the executive powers of the union; and therefore, whether we consider the incorporation of the bank as a law, or as a charter, it will be equally within the powers of congress: for the object of this institution could not be reached without the exertion of the combined sovereignty of the union.

⁷ 1 Bl. Com. 472.

⁸ 1 Bl. Com. 472, 473.

I have asked—how can new states, which are bodies politick, be formed, unless by the United States in congress assembled? Fact, as well as argument, justifies my sentiments on this subject. The conduct of congress has been similar on similar occasions. The same principles have directed the exercise of the same powers.

In the month of April, 1784, congress resolved, that part of the western territory “should be divided into distinct states.”

They further resolved, that the settlers should, “either on their own petition, or on the order of congress, receive authority from *them* to meet together, for the purpose of establishing a temporary government, to adopt the constitution and laws of any one of the original states.”

“When any such state shall have acquired twenty thousand free inhabitants, on giving due proof thereof to congress, they shall receive from *them* authority to call a convention of representatives, to establish a permanent constitution and government for themselves.”

“The preceding articles,” among others, “shall be formed into a charter of compact; shall be duly executed by the president of the United States in congress assembled, under his hand and the seal of the United States; shall be promulgated; and shall stand as fundamental constitutions between the thirteen original states, and each of the several states now newly described, unalterable from and after the sale of any part of the territory of such state, but by the joint consent of the United States in congress assembled, and of the particular state within which such alteration is proposed to be made.”

It will be difficult, I believe, to urge against the power of congress to grant a charter to the Bank of North America, any argument, which may not, with equal strength and fitness, be urged against the power of that body to form, execute, and promulgate a charter of compact for the new states.

The sentiments of the representatives of the United States, as

to their power of incorporating the bank, ought to have much weight with us. Their sentiments are strongly marked by their conduct, in their first resolutions respecting the bank. These resolutions are made at the same time, and on the same subject: but there is a striking difference in their manner. It was thought proper "that no other bank should be permitted within any of the states, during the war." Congress "*recommended* to the several states to make provision, for that purpose, by proper laws." It was thought prudent that the bank should be protected, by penal laws, from fraud, embezzlement, and forgery. Congress *recommended* it to the several legislatures to pass such laws. It was deemed expedient that bank notes should be received in payment of sums payable to the United States: congress *resolve*, that the notes "shall be receivable" in such payments. It was judged necessary that the bank should have a charter of incorporation: congress *resolve*, that the bank "shall be incorporated," on application made "*to congress*" for that purpose. The line of distinction between those things in which congress could only recommend, and those in which they could act, is drawn in the clearest manner. The incorporation of the national bank is ranked among those things, in which they could act.

This act of congress has, either expressly, or by implication, received the approbation of every state in the union. It was officially announced to every state by the superintendant of finance. Had any one state considered it as an exercise of usurped power, would not that state have remonstrated against it? But there is no such remonstrance.

This act of congress has been most explicitly recognized by the legislature of Pennsylvania. The law for preventing and punishing frauds and cheats upon the bank was passed on the 18th of March, 1782, and before the bank had obtained a charter from this state. By that law it is made felony without benefit of clergy, to forge the common seal of the president, directors, and company of the Bank of North America. Who

were the president, directors, and company of the Bank of North America? Those whom congress had made "a corporation and body politick, to all intents and purposes, by that name and style." How came that body by a "common seal?" The act of congress ordained that that body "should have full power and authority to make, have and use a common seal." In the act to incorporate the subscribers to the Bank of North America, the legislature, after reciting that the United States in congress assembled had "passed an ordinance to incorporate them," say, "the president and directors of the said bank have applied to this house for a similar act of incorporation, which request it is proper and reasonable to grant."

When the foregoing facts and arguments are considered, compared, and weighed, they will, it is hoped, evince and establish, *satisfactorily* to all, and *conclusively* on the legislature of Pennsylvania, the truth of this position—That the Bank of North America was legally and constitutionally instituted and organized, by the charter of incorporation granted by the United States in congress assembled.

II. Would it, then, be wise or politick in the legislature of Pennsylvania, to revoke the charter which it has granted to this institution? It would not be wise or politick—

1st. Because the proceeding would be nugatory. The recal of the charter of Pennsylvania would not repeal that of the United States, by which we have proved the bank to be legally and constitutionally instituted and organized.

2d. Because, though the legislature may destroy the legislative *operation*, yet it cannot undo the legislative *acknowledgment* of its own act. Though a statute be repealed, yet it shows the sense and opinion of the legislature concerning the subject of it, in the same manner as if it continued in force.⁹ The legislature declared, in the law, that it was proper and reasonable to grant the request of the president and directors of the bank, for an act of

⁹Foster, 394.

incorporation similar to the ordinance of congress: no repeal of the law can weaken the force of that declaration.

3d. Because such a proceeding would wound that confidence in the engagements of government, which it is so much the interest and duty of every state to encourage and reward. The act in question formed a charter of compact between the legislature of this state, and the president, directors, and company of the Bank of North America. The latter asked for nothing but what was proper and reasonable: the former granted nothing but what was proper and reasonable: the terms of the compact were, therefore, fair and honest: while these terms are observed on one side, the compact cannot, consistently with the rules of good faith, be departed from on the other.

It may be asked—Has not the state power over her own laws?—May she not alter, amend, extend, restrain, and repeal them at her pleasure?

I am far from opposing the legislative authority of the state: but it must be observed, that, according to the practice of the legislature, publick acts of very different kinds are drawn and promulgated under the same form. A law to vest or confirm an estate in an individual—a law to incorporate a congregation or other society—a law respecting the rights and properties of all the citizens of the state—are all passed in the same manner; are all clothed in the same dress of legislative formality; and are all equally acts of the representatives of the freemen of the commonwealth. But surely it will not be pretended, that, after laws of those different kinds are passed, the legislature possesses over each the same discretionary power of repeal. In a law respecting the rights and properties of all the citizens of the state, this power may be safely exercised by the legislature. Why? Because, in this case, the interest of those who make the law (the members of assembly and their constituents) and the interest of those who are to be affected by the law (the members of assembly and their constituents) is the same. It is a common

cause, and may, therefore, be safely trusted to the representatives of the community. None can hurt another, without, at the same time, hurting himself. Very different is the case with regard to a law, by which the state grants privileges to a congregation or other society. Here two parties are instituted, and two distinct interests subsist. Rules of justice, of faith, and of honor must, therefore, be established between them: for, if interest alone is to be viewed, the congregation or society must always lie at the mercy of the community. Still more different is the case in regard to a law, by which an estate is vested or confirmed in an individual: if, in this case, the legislature may, at discretion, and without any reason assigned, divest or destroy his estate, then a person seized of an estate in fee simple, under legislative sanction, is, in truth, nothing more than a solemn tenant at will.

For these reasons, whenever the objects and makers of an instrument, passed under the form of a law, are not the same, it is to be considered as a compact, and to be interpreted according to the rules and maxims by which compacts are governed. A foreigner is naturalized by law: is he a citizen only during pleasure? He is no more, if, without any cause of forfeiture assigned and established, the law, by which he is naturalized, may at pleasure be repealed. To receive the legislative stamp of stability and permanency, acts of incorporation are applied for from the legislature. If these acts may be repealed without notice, without accusation, without hearing, without proof, without forfeiture; where is the stamp of their stability? Their motto should be, "Levity." If the act for incorporating the subscribers to the Bank of North America shall be repealed in this manner, a precedent will be established for repealing, in the same manner, every other legislative charter in Pennsylvania. A pretence, as specious as any that can be alleged on this occasion, will never be wanting on any future occasion. Those acts of the state, which have hitherto been considered as the sure anchors of privilege

and of property, will become the sport of every varying gust of politicks, and will float wildly backwards and forwards on the irregular and impetuous tides of party and faction.

4th. It would not be wise or politick to repeal the charter granted by this state to the Bank of North America, because such a measure would operate, as far as it would have any operation, against the credit of the United States, on which the interest of this commonwealth and her citizens so essentially depends. This institution originated under the auspices of the United States: the subscription to the national bank was opened under the recommendations and the engagements of congress: citizens of this state, and of the other states, and foreigners have become stockholders, on the publick faith: the United States have pledged themselves "to promote and support the institution by such ways and means, from time to time, as may appear necessary for it, and consistent with the publick good."¹⁰ They have recommended to the legislature of each state, "to pass such laws as they might judge necessary for giving the ordinance incorporating the bank its full operation." Pennsylvania has entered fully into the views, the recommendations, and the measures of congress respecting the bank. She has declared in the strongest manner her sense of their propriety, their reasonableness, and their necessity: she has passed laws for giving them their full operation. Will it redound to the credit of the United States to adopt and pursue a contrary system of conduct? The acts and recommendations of congress subsist still in all their original force: will it not have a tendency to shake all confidence in the councils and proceedings of the United States, if those acts and recommendations are now disregarded, without any reason shown for disregarding them? What influence will such a proceeding have upon the opinions and sentiments of the citizens of the United States and of foreigners? In one year they see measures respecting an object of confessed

¹⁰ 26th May, 1781.

publick importance adopted and recommended with ardour by congress; and the views and wishes of that body zealously pursued by Pennsylvania: in another year they see those very measures, without any apparent reason for the change, warmly reprobated by that state: they must conclude one of two things:—that congress adopted and recommended those measures hastily and without consideration: or that Pennsylvania has reprobated them undutifully and disrespectfully. The former conclusion will give rise to very unfavourable reflections concerning the discernment both of the state and of the United States: the latter will suggest very inauspicious sentiments concerning the federal disposition and character of this commonwealth. The result of the conclusion will be—that the United States do not deserve, or that they will not receive, support in their system of finance.—These deductions and inferences will have particular weight, as they will be grounded on the conduct of Pennsylvania, hitherto one of the most federal, active, and affectionate states in the Union.

5th. It would not be wise or politick in the legislature to repeal their charter to the bank; because the tendency of such a step would be to deprive this state and the United States of all the advantages, publick and private, which would flow from the institution, in times of war, and in times of peace.

Let us turn our attention to some of the most material advantages resulting from a bank.

1st. It increases circulation, and invigorates industry. “It is not,” says Dr. Smith, in his *Treatise on the Wealth of Nations*,¹¹ “by augmenting the capital of the country, but by rendering a greater part of that capital active and productive than would otherwise be so, that the most judicious operations of banking can increase the industry of the country. The part of his capital which a dealer is obliged to keep by him unemployed, and in ready money, for answering occasional demands, is so much

¹¹ Vol. 1, p. 483, 484.

dead stock, which, so long as it remains in this situation, produces nothing either to him or to his country. The judicious operations of banking enable him to convert this dead stock into active and productive stock: into materials to work upon, into tools to work with, and into provisions and subsistence to work for; into stock which produces something both to himself and to his country. The gold and silver money which circulates in any country, and by means of which the produce of its land and labor is annually circulated and distributed to the proper consumers, is, in the same manner as the ready money of the dealer, all dead stock. It is a very valuable part of the capital of the country, which produces nothing to the country. The judicious operations of banking, by substituting paper in the room of a great part of this gold and silver, enables the country to convert a great part of this dead stock into active and productive stock; into stock which produces something to the country. The gold and silver money which circulates in any country may very properly be compared to a highway, which, while it circulates and carries to market all the grass and corn of the country, produces, itself, not a single pile of either. The judicious operations of banking, by providing, if I may be allowed so violent a metaphor, a sort of wagon-way through the air, enable country to convert, as it were, a great part of its highways into good pasture and corn fields, and thereby to increase very considerably the annual produce of its land and labour."

The same sensible writer informs us in another place, that "the¹² substitution of paper in the room of gold and silver money, replaces a very expensive instrument of commerce with one much less costly, and sometimes equally convenient. Circulation comes to be carried on by a new wheel, which it costs less both to erect and to maintain than the old one.—There are several sorts of paper money, but the circulating notes of banks and bankers is the species which is best known, and which seems

¹² Vol. I, p. 434, 435.

best adapted for this purpose.”—“These notes come to have the same currency as gold and silver money, from the confidence that such money can at any time be had for them.”

Sir James Stewart calls banking “the great engine,¹³ by which domestick circulation is carried on.”

To have a free, easy, and equable instrument of circulation is of much importance in all countries: it is of peculiar importance in young and flourishing countries, in which the demands for credit, and the rewards of industry, are greater than in any other. When we view the extent and situation of the United States, we shall be satisfied that their inhabitants may, for a long time to come, employ profitably, in the improvement of their lands, a greater stock than they will be able easily to procure. In such a situation, it will always be of great service to them to save as much as possible the expense of so costly an instrument of commerce as gold and silver, to substitute in its place one cheaper, and for many purposes, not less convenient; and to convert the value of the gold and silver into the labour and the materials necessary for improving and extending their settlements and plantations.

“To the banks of Scotland,” says Sir James Stewart,¹⁴ “the improvement of that country is entirely owing; and until they are generally established in other countries of Europe, where trade and industry are little known, it will be very difficult to set those great engines to work.”

2d. The influence of a bank on credit is no less salutary than its influence on circulation. This position is, indeed, little more than a corollary from the former. Credit is confidence; and, before we can place confidence in a payment, we must be convinced that he who is to make it will be both able and willing to do so at the time stipulated. However unexceptionable his character and fortune may be, this conviction can never take

¹³ 2 Pol. Ec. 350.

¹⁴ 2 Pol. Ec. 356.

place, unless in a country where solid property can be, at any time, turned into a circulating medium.

3d. Trade, as well as circulation and credit, derives great support and assistance from a bank. Credit and circulation produce punctuality; and punctuality is the soul of commerce. Let us appeal to experience as well as reason.

Dr. Smith says,¹⁵ he has heard it asserted, that the trade of the city of Glasgow doubled in about fifteen years after the first erection of the banks there; and that the trade of Scotland has more than quadrupled since the first erection of the two publick banks at Edinburgh, of which one was established in 1695, and the other in 1727. Whether the increase has been in so great a proportion, the author pretends not to know. But that the trade of Scotland has increased very considerably during this period, and that the banks have contributed a good deal to this increase, cannot, he says, be doubted.

These observations, and observations similar to these, have induced Sir James Stewart to conclude,—that “Banking,¹⁶ in the age we live, is that branch of credit which best deserves the attention of a statesman. Upon the right establishment of banks depends the prosperity of trade, and the equable course of circulation. By them solid property may be melted down. By the means of banks, money may be constantly kept at a due proportion to alienation. If alienation increases, more property may be melted down. If it diminishes, the quantity of money stagnating will be absorbed by the bank, and part of the property formerly melted down in the securities granted to them will be, as it were, consolidated anew. These must pay, for the country, the balance of their trade with foreign nations: these keep the mints at work: and it is by these means, principally, that private, mercantile, and publick credit is supported.”

I make no apology for the number and length of the quota-

¹⁵ Vol. 1, p. 442.

¹⁶ 2 Pol. Ec. 358.

tions here used. They are from writers of great information, profound judgment, and unquestioned candour. They appear strictly and strongly applicable to my subject: and being so, should carry with them the greatest weight and influence; for the sentiments, which they contain and inculcate, must be considered as resulting from general principles and facts, and not as calculated for any partial purpose in this commonwealth.

But, here, it will probably be asked—Has your reasoning been verified by experience in this country? What advantages have resulted from the bank to commerce, circulation, and credit? Was our trade ever on such an undesirable footing? Is not the country distressed by the want of a circulating medium? Is not credit almost totally destroyed?

I answer—There is, unfortunately, too much truth in the representation: but if events are properly distinguished, and traced to their causes, it will be found—that none of the inconveniences abovementioned have arisen from the bank—that some of them have proceeded, at least in part, from the opposition which has been given to it—and that, as to others, its energy has not been sufficient to counteract or control them.

The disagreeable state of our commerce has been the effect of extravagant and injudicious importation. During the war, our ports were in a great measure blocked up. Imported articles were scarce and dear; and we felt the disadvantages of a stagnation in business. Extremes frequently introduce one another. When hostilities ceased, the floodgates of commerce were opened; and an inundation of foreign manufactures overflowed the United States: we seemed to have forgot, that to pay was as necessary in trade as to purchase; and we observed no proportion between our imports, and our produce and other natural means of remittance. What was the consequence? Those who made any payments made them chiefly in specie; and in that way diminished our circulation. Others made no remittances at all, and thereby injured our credit. This account of what happened

between the European merchants and our importers, corresponds exactly with what happened between our importers and the retailers spread over the different parts of the United States. The retailers, if they paid at all, paid in specie: and thus every operation, foreign and domestick, had an injurious effect on our credit, our circulation, and our commerce. But are any of these disadvantages to be ascribed to the bank? No. Is it to be accounted a fault or defect in the bank, that it did not prevent or remedy those disadvantages? By no means. Because one is not able to stem a torrent, is he therefore to be charged with augmenting its strength? The bank has had many difficulties to encounter. The experiment was a new one in this country: it was therefore necessary that it should be conducted with caution. While the war continued, the demands of the publick were great, and the stock of the bank was but inconsiderable; it had its active enemies, and its timid friends. Soon after the peace was concluded, its operations were restrained and embarrassed by an attempt to establish a new bank. A year had not elapsed after this, when the measure, which has occasioned these considerations, was introduced into the legislature, and caused, for some time, a total stagnation in the business of the institution. When all these circumstances are recollected and attended to, it will be matter of surprise that the bank has done so much, and not that it has done no more. Let it be deemed, as it ought to be, the object of publick confidence, and not of publick jealousy: let it be encouraged, instead of being opposed, by the counsels and proceedings of the state: then will the genuine effects of the institution appear; then will they spread their auspicious influence over agriculture, manufactures, and commerce.

4th. Another advantage to be expected from the Bank of North America is, the establishment of an undepreciating paper currency through the United States. This is an object of great

consequence, whether it be considered in a political, or in a commercial view. It will be found to have a happy effect on the collection, the distribution, and the management of the publick revenue: it will remove the inconveniences and fluctuation attending exchange and remittances between the different states. "It is the interest of every trading state to have a sufficient quantity of paper, well secured, to circulate through it, so as to facilitate payments every where, and to cut off inland exchanges, which are a great clog upon trade, and are attended with the risk of receiving the paper of people, whose credit is but doubtful.¹⁷

Such are the advantages which may be expected to flow from a national bank, in times of peace. In times of war, the institution may be considered as essential. We have seen that, without it, the business of the department of finance could not have been carried on in the late war. It will be of use to recollect the situation of the United States with regard to this subject. The two or three first years of the war were sufficient to convince the British government, and the British armies, that they could not subdue the United States by military force. Their hopes of success rested on the failure of our finances. This was the source of our fears, as well as of the hopes of our enemies. By this thread our fate was suspended. We watched it with anxiety: we saw it stretched and weakened every hour: the deathful instrument was ready to fall upon our heads: on our heads it must have fallen, had not publick credit, in the moment when it was about to break asunder, been entwined and supported by the credit of the bank. Congress, to speak without metaphors, had not money or credit to hire an express, or purchase a cord of wood. General Washington, on one occasion, and probably more than one, saw his army literally unable to march. Our distress was such, that it would have been destruction to have

¹⁷ 2 Pol. Ec. 415.

divulged it: but it ought to be known now; and when known, ought to have its proper influence on the publick mind and the publick conduct.

The expenses of a war must be defrayed, either——1st, by treasures previously accumulated——or 2dly, by supplies levied and collected within the year, as they are called for——or 3dly, by the anticipation of the publick revenues. No one will venture to refer us to the first mode. To the second the United States, as well as every state in Europe, are rendered incompetent by the modern system of war, which, in the military operations of one year, concentrates the revenue of many. While our enemies adhere to this system, we must adopt it. The anticipation of revenue, then, is the only mode, by which the expenses of a future war can be defrayed. How the revenues of the United States can be anticipated without the operations of a national bank, I leave to those who attack the Bank of North America to show. They ought to be well prepared to show it; for they must know, that to be incapable of supporting a war is but a single step from being involved in one.

The result of the whole, under this head, is,—that in times of peace, the national bank will be highly advantageous; that in times of war, it will be essentially necessary, to the United States.

I flatter myself, that I have evinced the validity and the utility of the institution.

It has been surmised, that the design of the legislature is not to destroy, but to modify, the charter of the bank; and that if the directors would assent to reasonable amendments, the charter, modified, might continue in force. If this is the case, surely to repeal the law incorporating the bank is not the proper mode of doing the business. The bank was established and organized under the authority and auspices of congress. The directors have a trust and duty to discharge to the United States, and to all the particular states, each of which has an equal

interest in the bank. They could not have received, from this state, a charter, unless it had been *similar* to that granted by congress. Without the approbation of congress, where all the states are represented, the directors would not be justified in agreeing to any alteration of the institution. If alterations are necessary; they should be made through the channel of the United States in congress assembled.

ADDRESS TO THE CITIZENS OF PHILADELPHIA AT
THE STATE HOUSE

1787

(Text according to No. 4 of Bibliography)

AN ADDRESS TO A MASS MEETING AT THE STATE
HOUSE IN PHILADELPHIA, 6TH OCTOBER, 1787

Mr. Chairman and Fellow-Citizens:

HAVING received the honor of an appointment to represent you in the late Convention, it is perhaps, my duty to comply with the request of many gentlemen whose characters and judgments I sincerely respect, and who have urged, that this would be a proper occasion to lay before you any information which will serve to explain and elucidate the principles and arrangements of the constitution, that has been submitted to the consideration of the United States. I confess that I am unprepared for so extensive and so important a disquisition; but the insidious attempts which are clandestinely and industriously made to pervert and destroy the new plan, induce me the more readily to engage in its defence; and the impressions of four months constant attention to the subject, have not been so easily effaced as to leave me without an answer to the objections which have been raised.

It will be proper, however, before I enter into the refutation of the charges that are alledged, to mark the leading discrimination between the state constitutions, and the constitution of the United States. When the people established the powers of legislation under their separate governments, they invested their representatives with every right and authority which they did not in explicit terms reserve; and therefore upon every question, respecting the jurisdiction of the House of Assembly, if the frame of government is silent, the jurisdiction

is efficient and complete. But in delegating foederal powers, another criterion was necessarily introduced, and the Congressional authority is to be collected, not from tacit implication, but from the positive grant expressed in the instrument of the union. Hence it is evident, that in the former case, every thing which is not reserved, is given, but in the latter the reverse of the proposition prevails, and every thing which is not given, is reserved. This distinction being recognized, will furnish an answer to those who think the omission of a bill of rights, a defect in the proposed constitution: for it would have been superfluous and absurd to have stipulated with a foederal body of our own creation, that we should enjoy those privileges, of which we are not divested either by the intention or the act, that has brought that body into existence. For instance, the Liberty of the Press, which has been a copious source of declamation and opposition, what controul can proceed from the foederal government to shackle or destroy that sacred palladium of national freedom? If indeed, a power similar to that which has been granted for the regulation of commerce, had been granted to regulate literary publications, it would have been as necessary to stipulate that the Liberty of the Press should be preserved inviolate, as that the impost should be general in its operation.— With respect likewise to the particular district of ten miles, which is to be made the seat of foederal government, it will undoubtedly be proper to observe this salutary precaution, as there the legislative power will be exclusively lodged in the President, Senate, and House of Representatives of the United States. But this could not be an object with the Convention, for it must naturally depend upon a future compact, to which the citizens immediately interested will, and ought to be parties; and there is no reason to suspect that so popular a privilege will in that case be neglected. In truth then, the proposed system possesses no influence whatever upon the press, & it would have been merely nugatory to have introduced a

formal declaration upon the subject—nay, that very declaration might have been construed to imply that some degree of power was given, since we undertook to define its extent.

Another objection that has been fabricated against the new constitution, is expressed in this disingenuous form—‘the Trial by Jury is abolished in civil cases.’ I must be excused, my fellow-citizens, if upon this point, I take advantage of my professional experience to detect the futility of the assertion. Let it be remembered then, that the business of the Foederal Convention was not local, but general—not limited to the views and establishments of a single state, but coextensive with the Continent, and comprehending the views and establishments of Thirteen Independent Sovereignities. When therefore, this subject was in discussion, we were involved in difficulties which pressed on all sides, and no precedent could be discovered to direct our course. The cases open to a Trial by Jury differed in the different states, it was therefore impracticable on that ground to have made a general rule. The want of uniformity would have rendered any reference to the practice of the states idle and useless; and it could not with any propriety, be said, that ‘the Trial by Jury shall be as heretofore,’ since there has never existed any foederal system of jurisprudence to which the declaration could relate. Besides, it is not in all cases that the Trial by Jury is adopted in civil questions, for causes depending in courts of admiralty, such as relate to maritime captures, and such as are agitated in courts of equity, do not require the intervention of that tribunal. How then was the line of discrimination to be drawn? The Convention found the task too difficult for them, and they left the business as it stands, in the fullest confidence that no danger could possibly ensue, since the proceedings of the supreme court are to be regulated by the Congress, which is a faithful representation of the people; and the oppression of government is effectually barred, by declaring, that in all criminal cases, the Trial by Jury shall be preserved.

This constitution, it has been further urged, is of a pernicious tendency, because it tolerates a standing army in the time of peace. This has always been a topic of popular declamation; and yet, I do not know a nation in the world, which has not found it necessary and useful to maintain the appearance of strength in a season of the most profound tranquility. Nor is it a novelty with us; for under the present articles of confederation, Congress certainly possesses this reprobated power; and the exercise of that power is proved at this moment by her cantonments along the banks of the Ohio. But what would be our national situation, were it otherwise? Every principle of policy must be subverted, and the government must declare war, before they are prepared to carry it on. Whatever may be the provocation, however important the object in view, and however necessary dispatch and secrecy may be, still the declaration must precede the preparation, and the enemy will be informed of your intention, not only before you are equipped for an attack, but even before you are fortified for a defence. The consequence is too obvious to require any further delineation, and no man, who regards the dignity and safety of his country, can deny the necessity of a military force, under the controul and with the restrictions which the new constitution provides.

Perhaps there never was a charge made with less reasons than that which predicts the institution of a baneful aristocracy in the foederal senate. This body branches into two characters, the one legislative and the other executive. In its legislative character it can effect no purpose, without the co-operation of the house of representatives, and in its executive character it can accomplish no object, without the concurrence of the president. Thus fettered, I do not know any act which the senate can of itself perform, and such dependance necessarily precludes every idea of influence and superiority. But I will confess that in the organization of this body, a compromise between contending interests is discernible; and when we reflect how various are the

laws, commerce, habits, population and extent of the confederated states, this evidence of mutual concession and accommodation ought rather to command a generous applause, than to excite jealousy and reproach. For my part, my admiration can only be equalled by my astonishment, in beholding so perfect a system, formed from such heterogeneous materials.

The next accusation I shall consider, is that which represents the foederal constitution as not only calculated, but designedly framed, to reduce the state governments to mere corporations, and eventually to annihilate them. Those who have employed the term corporation upon this occasion, are not perhaps aware of its extent. In common parlance, indeed, it is generally applied to petty associations for the ease and conveniency of a few individuals; but in its enlarged sense, it will comprehend the government of Pennsylvania, the existing union of the states, and even this projected system is nothing more than a formal act of incorporation. But upon what pretence can it be alledged that it was designed to annihilate the state governments? For, I will undertake to prove that upon their existence, depends the existence of the foederal plan. For this purpose, permit me to call your attention to the manner in which the president, senate and house of representatives, are proposed to be appointed. The president is to be chosen by electors, nominated in such manner as the legislature of each state may direct; so that if there is no legislature, there can be no electors and consequently the office of president cannot be supplied. The senate is to be composed of two senators from each state, chosen by the legislature; and therefore if there is no legislature, there can be no senate. The house of representatives, is to be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature—unless therefore, there is a state legislature, that qualification cannot be ascertained, and the popular branch of the foed-

eral constitution must be extinct. From this view, then it is evidently absurd to suppose, that the annihilation of the separate governments will result from their union; or, that having that intention, the authors of the new system would have bound their connection with such indissoluble ties. Let me here advert to an arrangement highly advantageous, for you will perceive, without prejudice to the powers of the legislature in the election of senators, the people at large will acquire additional privilege in returning members to the house of representatives—whereas, by the present confederation, it is the legislature alone that appoints the delegates to Congress.

The power of direct taxation has likewise been treated as an improper delegation to the foederal government; but when we consider it is the duty of that body to provide for the national safety, to support the dignity of the union, and to discharge the debts contracted upon the collective faith of the states for their common benefit, it must be acknowledged, that those upon whom such important obligations are imposed, ought in justice and in policy to possess every means requisite for a faithful performance of their trust. But why should we be alarmed with visionary evils? I will venture to predict, that the great revenue of the United States must, and always will be raised by impost, for, being at once less obnoxious, and more productive, the interest of the government will be best promoted by the accommodation of the people. Still, however, the objects of direct taxation should be within reach in all cases of emergency; and there is no more reason to apprehend oppression in the mode of collecting a revenue from this resource, than in the form of an impost, which, by universal assent, is left to the authority of the foederal government. In either case, the force of civil institutions will be adequate to the purpose; and the dread of military violence, which has been assiduously disseminated, must eventually prove the mere effusion of a wild imagination, or a factious spirit. But the salutary consequences that must flow from thus ena-

bling the government to receive and support the credit of the union, will afford another answer to the objections upon this ground. The state of Pennsylvania particularly, which has encumbered itself with the assumption of a great proportion of the public debt, will derive considerable relief and advantage; for, as it was the embecility of the present confederation, which gave rise to the funding law, that law must naturally expire, when a competent and energetic foederal system shall be substituted—the state will then be discharged from an extraordinary burthen, and the national creditor will find it to be his interest to return to his original security.

After all my fellow-citizens, it is neither extraordinary or unexpected, that the constitution offered to your consideration should meet with opposition. It is the nature of man to pursue his own interest, in preference to the public good; and I do not mean to make any personal reflection, when I add, that it is the interest of a very numerous, powerful, and respectable body to counteract and destroy the excellent work produced by the late convention. All the officers of government, and all the appointments for the administration of justice and the collection of the public revenue, which are transferred from the individual to the aggregate sovereignty of the states, will necessarily turn the stream of influence and emolument into a new channel. Every person therefore, who enjoys, or expects to enjoy, a place of profit under the present establishment, will object to the proposed innovation; not, in truth, because it is injurious to the liberties of his country, but because it affects his schemes of wealth and consequence. I will confess, indeed, that I am not a blind admirer of this plan of government, and that there are some parts of it, which if my wish had prevailed, would certainly have been altered. But, when I reflect how widely men differ in their opinions, and that every man (and the observation applies likewise to every state) has an equal pretension to assert his own, I am satisfied that any thing nearer to perfection

could not have been accomplished. If there are errors, it should be remembered that the seeds of reformation are sown in the work itself, and the concurrence of two thirds of the Congress may at any time introduce alterations and amendments. Regarding it then, in every point of view, with a candid and disinterested mind, I am bold to assert, that it is the best form of government which has ever been offered to the world.

COMMENTARIES ON THE CONSTITUTION
1787

(Text from No. 16 of Bibliography)

SPEECH IN CONVENTION,
ON 24TH NOVEMBER, 1787

The system proposed, by the late convention, for the government of the United States, is now before you. Of that convention I had the honour to be a member. As I am the only member of that body who have the honour to be also a member of this, it may be expected that I should prepare the way for the deliberations of this assembly, by unfolding the difficulties which the late convention were obliged to encounter; by pointing out the end which they proposed to accomplish; and by tracing the general principles which they have adopted for the accomplishment of that end.

To form a good system of government for a single city or state, however limited as to territory, or inconsiderable as to numbers, has been thought to require the strongest efforts of human genius. With what conscious diffidence, then, must the members of the convention have revolved in their minds the immense undertaking which was before them. Their views could not be confined to a small or a single community, but were expanded to a great number of states; several of which contain an extent of territory, and resources of population, equal to those of some of the most respectable kingdoms on the other side of the Atlantick. Nor were even these the only objects to be comprehended within their deliberations. Numerous states yet unformed, myriads of the human race, who will inhabit regions hitherto uncultivated, were to be affected by the result of their proceedings. It was necessary, therefore, to form their calculations on a scale commensurate to a large portion of the globe.

For my own part, I have been often lost in astonishment at the vastness of the prospect before us. To open the navigation of a single river was lately thought, in Europe, an enterprise adequate to imperial glory. But could the commercial scenes of the Scheldt be compared with those that, under a good government, will be exhibited on the Hudson, the Delaware, the Potowmack, and the numerous other rivers, that water and are intended to enrich the dominions of the United States?

The difficulty of the business was equal to its magnitude. No small share of wisdom and address is requisite to combine and reconcile the jarring interests, that prevail, or seem to prevail, in a single community. The United States contain already thirteen governments mutually independent. Those governments present to the Atlantick a front of fifteen hundred miles in extent. Their soil, their climates, their productions, their dimensions, their numbers are different. In many instances a difference and even an opposition subsists among their interests; and a difference and even an opposition is imagined to subsist in many more. An apparent interest produces the same attachment as a real one; and is often pursued with no less perseverance and vigour. When all these circumstances are seen and attentively considered, will any member of this honourable body be surprised, that such a diversity of things produced a proportioned diversity of sentiment? will he be surprised that such a diversity of sentiment rendered a spirit of mutual forbearance and conciliation indispensably necessary to the success of the great work? and will he be surprised that mutual concessions and sacrifices were the consequences of mutual forbearance and conciliation? When the springs of opposition were so numerous and strong, and poured forth their waters in courses so varying, need we be surprised that the stream formed by their conjunction was impelled in a direction somewhat different from that, which each of them would have taken separately?

I have reason to think that a difficulty arose in the minds of

some members of the convention from another consideration—their ideas of temper and disposition of the people, for whom the constitution is proposed. The citizens of the United States, however different in some other respects, are well known to agree in one strongly marked feature of their character—a warm and keen sense of freedom and independence. This sense has been heightened by the glorious result of their late struggle against all the efforts of one of the most powerful nations of Europe. It was apprehended, I believe, by some, that a people so high spirited would ill brook the restraints of an efficient government. I confess that this consideration did not influence my conduct. I knew my constituents to be high spirited; but I knew them also to possess sound sense. I knew that, in the event, they would be best pleased with that system of government, which would best promote their freedom and happiness. I have often revolved this subject in my mind. I have supposed one of my constituents to ask me, why I gave such a vote on a particular question? I have always thought it would be a satisfactory answer to say—because I judged, upon the best consideration I could give, that such a vote was right. I have thought that it would be but a very poor compliment to my constituents to say, that, in my opinion, such a vote would have been proper, but that I supposed a contrary one would be more agreeable to those who sent me to the convention. I could not, even in idea, expose myself to such a retort as, upon the last answer, might have been justly made to me. Pray, sir, what reasons have you for supposing that a right vote would displease your constituents? Is this the proper return for the high confidence they have placed in you? If they have given cause for such a surmise, it was by choosing a representative, who could entertain such an opinion of them. I was under no apprehension, that the good people of this state would behold with displeasure the brightness of the rays of delegated power, when it only proved the superior splendour of the luminary, of which those rays were only the reflection.

A very important difficulty arose from comparing the extent of the country to be governed, with the kind of government which it would be proper to establish in it. It has been an opinion, countenanced by high authority, "that the natural property of small states is, to be governed as a republick; of middling ones, to be subject to a monarch; and of large empires, to be swayed by a despotick prince; and that the consequence is, that, in order to preserve the principles of the established government, the state must be supported in the extent it has acquired; and that the spirit of the state will alter in proportion as it extends or contracts its limits."¹ This opinion seems to be supported, rather than contradicted, by the history of the governments in the old world. Here then the difficulty appeared in full view. On one hand, the United States contain an immense extent of territory, and, according to the foregoing opinion, a despotick government is best adapted to that extent. On the other hand, it was well known, that, however the citizens of the United States might, with pleasure, submit to the legitimate restraints of a republican constitution, they would reject, with indignation, the fetters of despotism. What then was to be done? The idea of a confederate republick presented itself. This kind of constitution has been thought to have "all the internal advantages of a republican, together with the external force of a monarchical government."² Its description is, "a convention, by which several states agree to become members of a larger one, which they intend to establish. It is a kind of assemblage of societies, that constitute a new one, capable of increasing by means of farther association."³ The expanding quality of such a government is peculiarly fitted for the United States, the greatest part of whose territory is yet uncultivated.

But while this form of government enabled us to surmount

¹ Mont. Sp. L. b. 8, c. 20.

² Id. b. 9, c. 1. 1 Paley, 199-202.

³ Mont. Sp. L. b. 9, c. 1.

the difficulty last mentioned, it conducted us to another, of which I am now to take notice. It left us almost without precedent or guide; and consequently, without the benefit of that instruction, which, in many cases, may be derived from the constitution, and history, and experience of other nations. Several associations have frequently been called by the name of confederate states, which have not, in propriety of language, deserved it. The Swiss cantons are connected only by alliances. The United Netherlands are indeed an assemblage of societies; but this assemblage constitutes no *new one*; and, therefore, it does not correspond with the full definition of a confederate republick. The Germanick body is composed of such disproportioned and discordant materials, and its structure is so intricate and complex, that little useful knowledge can be drawn from it. Ancient history discloses, and barely discloses to our view, some confederate republicks—the Achæan league, the Lycian confederacy, and the Amphyc-tionick council. But the facts recorded concerning their constitutions are so few and general, and their histories are so unmarked and defective, that no satisfactory information can be collected from them concerning many particular circumstances, from an accurate discernment and comparison of which alone, legitimate and practical inferences can be made from one constitution to another. Besides, the situation and dimensions of those confederacies, and the state of society, manners, and habits in them, were so different from those of the United States, that the most correct descriptions could have supplied but a very small fund of applicable remark. Thus, in forming this system, we were deprived of many advantages, which the history and experience of other ages and other countries would, in other cases, have afforded us.

Permit me to add, in this place, that the science even of government itself seems yet to be almost in its state of infancy. Governments, in general, have been the result of force, of fraud, and of accident. After a period of six thousand years has elapsed

since the creation, the United States exhibit to the world the first instance, as far as we can learn, of a nation, unattacked by external force, unconvulsed by domestick insurrections, assembling voluntarily, deliberating fully, and deciding calmly, concerning that system of government, under which they would wish that they and their posterity should live. The ancients, so enlightened on other subjects, were very uninformed with regard to this. They seem scarcely to have had any idea of any other kinds of governments, than the three simple forms designated by the epithets, monarchical, aristocratical, and democratical. I know that much and pleasing ingenuity has been exerted, in modern times, in drawing entertaining parallels between some of the ancient constitutions and some of the mixed governments that have since existed in Europe. But I much suspect that, on strict examination, the instances of resemblance will be found to be few and weak; to be suggested by the improvements, which, in subsequent ages, have been made in government, and not to be drawn immediately from the ancient constitutions themselves, as they were intended and understood by those who framed them. To illustrate this, a similar observation may be made on another subject. Admiring critics have fancied, that they have discovered in their favourite Homer the seeds of all the improvements in philosophy, and in the sciences, made since his time. What induces me to be of this opinion is, that Tacitus, the profound politician Tacitus, who lived towards the latter end of those ages which are now denominated ancient, who undoubtedly had studied the constitutions of all the states and kingdoms known before and in his time, and who certainly was qualified, in an uncommon degree, for understanding the full force and operation of each of them, considers, after all he had known and read, a mixed government, composed of the three simple forms, as a thing rather to be wished than expected: and he thinks, that if such a government could even be instituted, its duration could not be long. One thing is very certain, that the

doctrine of representation in government was altogether unknown to the ancients. Now the knowledge and practice of this doctrine is, in my opinion, essential to every system, that can possess the qualities of freedom, wisdom, and energy.

It is worthy of remark, and the remark may, perhaps, excite some surprise, that representation of the people is not, even at this day, the sole principle of any government in Europe. Great Britain boasts, and she may well boast, of the improvement she has made in politicks, by the admission of representation: for the improvement is important as far as it goes; but it by no means goes far enough. Is the executive power of Great Britain founded on representation? This is not pretended. Before the revolution, many of the kings claimed to reign by divine right, and others by hereditary right; and even at the revolution, nothing farther was effected or attempted, than the recognition of certain parts of an original contract,⁴ supposed at some remote period to have been made between the king and the people. A contract seems to exclude, rather than to imply, delegated power. The judges of Great Britain are appointed by the crown. The judicial authority, therefore, does not depend upon representation, even in its most remote degree. Does representation prevail in the legislative department of the British government? Even here it does not predominate; though it may serve as a check. The legislature consists of three branches, the king, the lords, and the commons. Of these, only the latter are supposed by the constitution to represent the authority of the people. This short analysis clearly shows, to what a narrow corner of the British constitution the principle of representation is confined. I believe it does not extend farther, if so far, in any other government in Europe. For the American States were reserved the glory and the happiness of diffusing this vital principle through all the constituent parts of government. Representation is the chain of communication between the people, and those to whom they

⁴ 1 Bl. Com. 233.

have committed the exercise of the powers of government. This chain may consist of one or more links; but in all cases it should be sufficiently strong and discernible.

To be left without guide or precedent was not the only difficulty, in which the convention were involved, by proposing to their constituents a plan of a confederate republick. They found themselves embarrassed with another of peculiar delicacy and importance; I mean that of drawing a proper line between the national government and the governments of the several states. It was easy to discover a proper and satisfactory principle on the subject. Whatever object of government is confined in its operation and effects within the bounds of a particular state, should be considered as belonging to the government of that state; whatever object of government extends in its operation or effects beyond the bounds of a particular state, should be considered as belonging to the government of the United States. But though this principle be sound and satisfactory, its application to particular cases would be accompanied with much difficulty; because, in its application, room must be allowed for great discretionary latitude of construction of the principle. In order to lessen or remove the difficulty arising from discretionary construction on this subject, an enumeration of particular instances, in which the application of the principle ought to take place, has been attempted with much industry and care. It is only in mathematical science, that a line can be described with mathematical precision. But I flatter myself that, upon the strictest investigation, the enumeration will be found to be safe and unexceptionable; and accurate too, in as great a degree as accuracy can be expected in a subject of this nature. Particulars under this head will be more properly explained, when we descend to the minute view of the enumeration which is made in the proposed constitution.

After all, it will be necessary, that, on a subject so peculiarly delicate as this, much prudence, much candour, much modera-

tion, and much liberality should be exercised and displayed, both by the federal government and by the governments of the several states. It is to be hoped, that those virtues in government will be exercised and displayed, when we consider, that the powers of the federal government and those of the state governments are drawn from sources equally pure. If a difference can be discovered between them, it is in favour of the federal government; because that government is founded on a representation of the whole union; whereas the government of any particular state is founded only on the representation of a part, inconsiderable when compared with the whole. Is it not more reasonable to suppose, that the counsels of the whole will embrace the interest of every part, than that the counsels of any part will embrace the interests of the whole.

I intend not, sir, by this description of the difficulties with which the convention were surrounded, to magnify their skill or their merit in surmounting them, or to insinuate that any predicament, in which the convention stood, should prevent the closest and most cautious scrutiny into the performance, which they have exhibited to their constituents and to the world. My intention is of far other and higher aim—to evince by the conflicts and difficulties which must arise from the many and powerful causes which I have enumerated, that it is hopeless and impracticable to form a constitution, which will, in every part, be acceptable to every citizen, or even to every government in the United States; and that all which can be expected is, to form such a constitution as, upon the whole, is the best that can possibly be obtained. Man and perfection!—a state and perfection!—an assemblage of states and perfection! Can we reasonably expect, however ardently we may wish, to behold the glorious union?

I can well recollect, though I believe I cannot convey to others, the impression, which, on many occasions, was made by the difficulties which surrounded and pressed the convention. The

great undertaking, at some times, seemed to be at a stand; at other times, its motions seemed to be retrograde. At the conclusion, however, of our work, many of the members expressed their astonishment at the success with which it terminated.

Having enumerated some of the difficulties which the convention were obliged to encounter in the course of their proceedings, I shall next point out the end which they proposed to accomplish. Our wants, our talents, our affections, our passions, all tell us that we were made for a state of society. But a state of society could not be supported long or happily without some civil restraint. It is true that, in a state of nature, any one individual may act uncontrolled by others; but it is equally true, that, in such a state, every other individual may act uncontrolled by him. Amidst this universal independence, the dissensions and animosities between interfering members of the society would be numerous and ungovernable. The consequence would be, that each member, in such a natural state, would enjoy less liberty, and suffer more interruption, than he would in a regulated society. Hence the universal introduction of governments of some kind or other into the social state. The liberty of every member is increased by this introduction, for each gains more by the limitation of the freedom of every other member, than he loses by the limitation of his own. The result is, that civil government is necessary to the perfection and happiness of man. In forming this government, and carrying it into execution, it is essential that the interest and authority of the whole community should be binding on every part of it.

The foregoing principles and conclusions are generally admitted to be just and sound with regard to the nature and formation of single governments, and the duty of submission to them. In some cases they will apply, with much propriety and force, to states already formed. The advantages and necessity of civil government among individuals in society are not greater or stronger than, in some situations and circumstances, are the ad-

vantages and necessity of a federal government among states. A natural and a very important question now presents itself. Is such the situation—are such the circumstances of the United States? A proper answer to this question will unfold some very interesting truths.

The United States may adopt any one of four different systems. They may become consolidated into one government, in which the separate existence of the states shall be entirely absorbed. They may reject any plan of union or association, and act as separate and unconnected states. They may form two or more confederacies. They may unite in one federal republick. Which of these systems ought to have been proposed by the convention?—To support with vigour, a single government over the whole extent of the United States, would demand a system of the most unqualified and the most unremitted despotism. Such a number of separate states, contiguous in situation, unconnected and disunited in government, would be, at one time, the prey of foreign force, foreign influence, and foreign intrigue; at another, the victim of mutual rage, rancour, and revenge. Neither of these systems found advocates in the late convention: I presume they will not find advocates in this. Would it be proper to divide the United States into two or more confederacies? It will not be unadvisable to take a more minute survey of this subject. Some aspects, under which it may be viewed, are far from being, at first sight, uninviting. Two or more confederacies would be each more compact and more manageable, than a single one extending over the same territory. By dividing the United States into two or more confederacies, the great collision of interests, apparently or really different and contrary, in the *whole extent* of their dominion, would be broken, and in a great measure disappear in the several parts. But these advantages, which are discovered from certain points of view, are greatly overbalanced by inconveniences that will appear on a more accurate examination. Animosities, and perhaps wars, would arise from

assigning the extent, the limits, and the rights of the different confederacies. The expenses of governing would be multiplied by the number of federal governments. The danger resulting from foreign influence and mutual dissensions would not, perhaps, be less great and alarming in the instance of different confederacies, than in the instance of different though more numerous unassociated states. These observations, and many others that might be made on the subject, will be sufficient to evince, that a division of the United States into a number of separate confederacies would probably be an unsatisfactory and an unsuccessful experiment. The remaining system which the American States may adopt is, a union of them under one confederate republick. It will not be necessary to employ much time or many arguments to show, that this is the most eligible system that can be proposed. By adopting this system, the vigour and decision of a wide spreading monarchy may be joined to the freedom and beneficence of a contracted republick. The extent of territory, the diversity of climate and soil, the number, and greatness, and connexion of lakes and rivers, with which the United States are intersected and almost surrounded, all indicate an enlarged government to be fit and advantageous for them. The principles and dispositions of their citizens indicate, that in this government liberty shall reign triumphant. Such indeed have been the general opinions and wishes entertained since the era of our independence. If those opinions and wishes are as well founded as they have been general, the late convention were justified in proposing to their constituents one confederate republick, as the best system of a national government for the United States.

In forming this system, it was proper to give minute attention to the interest of all the parts; but there was a duty of still higher import—to feel and to show a predominating regard to the superiour interests of the whole. If this great principle had not prevailed, the plan before us would never have made its

appearance. The same principle that was so necessary in forming it, is equally necessary in our deliberations, whether we should reject or ratify it.

I make these observations with a design to prove and illustrate this great and important truth—that in our decisions on the work of the late convention, we should not limit our views and regards to the state of Pennsylvania. The aim of the convention was, to form a system of good and efficient government on the more extensive scale of the United States. In this, as in every other instance, the work should be judged with the same spirit with which it was performed. A principle of duty as well as of candour demands this.

We have remarked, that civil government is necessary to the perfection of society: we now remark, that civil liberty is necessary to the perfection of civil government. Civil liberty is natural liberty itself, divested only of that part, which, placed in the government, produces more good and happiness to the community, than if it had remained in the individual. Hence it follows, that civil liberty, while it resigns a part of natural liberty, retains the free and generous exercise of all the human faculties, so far as it is compatible with the publick welfare.

In considering and developing the nature and end of the system before us, it is necessary to mention another kind of liberty, which has not yet, as far as I know, received a name. I shall distinguish it by the appellation of *federal liberty*. When a single government is instituted, the individuals of which it is composed surrender to it a part of their natural independence, which they before enjoyed as men. When a confederate republic is instituted, the communities of which it is composed surrender to it a part of their political independence, which they before enjoyed as states. The principles which directed, in the former case, what part of the natural liberty of the man ought to be given up, and what part ought to be retained, will give similar directions in the latter case. The states should resign to the na-

tional government that part, and that part only, of their political liberty, which, placed in that government, will produce more good to the whole, than if it had remained in the several states. While they resign this part of their political liberty, they retain the free and generous exercise of all their other faculties as states, so far as it is compatible with the welfare of the general and superintending confederacy.

Since states as well as citizens are represented in the constitution before us, and form the objects on which that constitution is proposed to operate, it was necessary to notice and define federal as well as civil liberty.

These general reflections have been made in order to introduce, with more propriety and advantage, a practical illustration of the end proposed to be accomplished by the late convention.

It has been too well known—it has been too severely felt—that the present confederation is inadequate to the government and to the exigencies of the United States. The great struggle for liberty in this country, should it be unsuccessful, will probably be the last one which she will have for her existence and prosperity, in any part of the globe. And it must be confessed, that this struggle has, in some of the stages of its progress, been attended with symptoms that foreboded no fortunate issue. To the iron hand of tyranny, which was lifted up against her, she manifested, indeed, an intrepid superiority. She broke in pieces the fetters which were forged for her, and showed that she was unassailable by force. But she was environed by dangers of another kind, and springing from a very different source. While she kept her eye steadily fixed on the efforts of oppression, licentiousness was secretly undermining the rock on which she stood.

Need I call to your remembrance the contrasted scenes, of which we have been witnesses? On the glorious conclusion of our conflict with Britain, what high expectations were formed

concerning us by others! What high expectations did we form concerning ourselves! Have those expectations been realized? No. What has been the cause? Did our citizens lose their perseverance and magnanimity? No. Did they become insensible of resentment and indignation at any high handed attempt, that might have been made to injure or enslave them? No. What then has been the cause? The truth is, we dreaded danger only on one side: this we manfully repelled. But on another side, danger, not less formidable, but more insidious, stole in upon us; and our unsuspecting tempers were not sufficiently attentive, either to its approach or to its operations. Those, whom foreign strength could not overpower, have well nigh become the victims of internal anarchy.

If we become a little more particular, we shall find that the foregoing representation is by no means exaggerated. When we had baffled all the menaces of foreign power, we neglected to establish among ourselves a government, that would ensure domestic vigour and stability. What was the consequence? The commencement of peace was the commencement of every disgrace and distress, that could befall a people in a peaceful state. Devoid of national power, we could not prohibit the extravagance of our importations, nor could we derive a revenue from their excess. Devoid of national importance, we could not procure for our exports a tolerable sale at foreign markets. Devoid of national credit, we saw our publick securities melt in the hands of the holders, like snow before the sun. Devoid of national dignity, we could not, in some instances, perform our treaties on our parts; and, in other instances, we could neither obtain nor compel the performance of them on the part of others. Devoid of national energy, we could not carry into execution our own resolutions, decisions, or laws.

Shall I become more particular still? The tedious detail would disgust me: nor is it now necessary. The years of languor are past. We have felt the dishonour, with which we have been cov-

ered: we have seen the destruction with which we have been threatened. We have penetrated to the causes of both, and when we have once discovered them, we have begun to search for the means of removing them. For the confirmation of these remarks, I need not appeal to an enumeration of facts. The proceedings of congress, and of the several states, are replete with them. They all point out the weakness and insufficiency of the present confederation as the cause, and an efficient general government as the only cure of our political distempers.

Under these impressions, and with these views, was the late convention appointed; and under these impressions, and with these views, the late convention met.

We now see the great end which they proposed to accomplish. It was to frame, for the consideration of their constituents, one federal and national constitution—a constitution that would produce the advantages of good, and prevent the inconveniences of bad government—a constitution, whose beneficence and energy would pervade the whole union, and bind and embrace the interests of every part—a constitution that would ensure peace, freedom, and happiness, to the states and people of America.

We are now naturally led to examine the means, by which they proposed to accomplish this end. This opens more particularly to our view the important discussion before us. But previously to our entering upon it, it will not be improper to state some general and leading principles of government, which will receive particular applications in the course of our investigations.

There necessarily exists in every government a power, from which there is no appeal; and which, for that reason, may be termed supreme, absolute, and uncontrollable. Where does this power reside? To this question, writers on different governments will give different answers. Sir William Blackstone will tell you, that in Britain, the power is lodged in the British parliament; that the parliament may alter the form of the govern-

ment; and that its power is absolute and without control. The idea of a constitution, limiting and superintending the operations of legislative authority, seems not to have been accurately understood in Britain. There are, at least, no traces of practice, conformable to such a principle. The British constitution is just what the British parliament pleases. When the parliament transferred legislative authority to Henry the eighth, the act transferring it could not, in the strict acceptation of the term, be called unconstitutional.

To control the power and conduct of the legislature by an overruling constitution, was an improvement in the science and practice of government reserved to the American States.

Perhaps some politician, who has not considered, with sufficient accuracy, our political systems, would answer, that, in our governments, the supreme power was vested in the constitutions. This opinion approaches a step nearer to the truth, but does not reach it. The truth is, that, in our governments, the supreme, absolute, and uncontrollable power remains in the people. As our constitutions are superiour to our legislatures; so the people are superiour to our constitutions. Indeed the superiority, in this last instance, is much greater; for the people possess, over our constitutions, control in act, as well as in right.

The consequence is, that the people may change the constitutions, whenever and however they please. This is a right, of which no positive institution can ever deprive them.

These important truths, sir, are far from being merely speculative: we, at this moment, speak and deliberate under their immediate and benign influence. To the operation of these truths, we are to ascribe the scene, hitherto unparalleled, which America now exhibits to the world—a gentle, a peaceful, a voluntary, and a deliberate transition from one constitution of government to another. In other parts of the world, the idea of revolutions in government is, by a mournful and indissoluble association, con-

nected with the idea of wars, and all the calamities attendant on wars. But happy experience teaches us to view such revolutions in a very different light—to consider them only as progressive steps in improving the knowledge of government, and increasing the happiness of society and mankind.

Oft have I viewed with silent pleasure and admiration the force and prevalence, through the United States, of this principle—that the supreme power resides in the people; and that they never part with it. It may be called the *panacea* in politicks. There can be no disorder in the community but may here receive a radical cure. If the error be in the legislature, it may be corrected by the constitution; if in the constitution, it may be corrected by the people. There is a remedy, therefore, for every distemper in government, if the people are not wanting to themselves. For a people wanting to themselves, there is no remedy: from their power, as we have seen, there is no appeal; to their error, there is no superiour principle of correction.

There are three simple species of government—monarchy, where the supreme power is in a single person—aristocracy, where the supreme power is in a select assembly, the members of which either fill up, by election, the vacancies in their own body, or succeed to their places in it by inheritance, property, or in respect of some personal right or qualification—a republick or democracy, where the people at large retain the supreme power, and act either collectively or by representation.

Each of these species of government has its advantages and disadvantages.

The advantages of a monarchy are, strength, despatch, secrecy, unity of counsel. Its disadvantages are, tyranny, expense, ignorance of the situation and wants of the people, insecurity, unnecessary wars, evils attending elections or successions.

The advantages of aristocracy are, wisdom, arising from experience and education. Its disadvantages are, dissensions among themselves, oppression to the lower orders.

The advantages of democracy are, liberty, equal, cautious, and salutary laws, publick spirit, frugality, peace, opportunities of exciting and producing abilities of the best citizens. Its disadvantages are, dissensions, the delay and disclosure of publick counsels, the imbecility of publick measures retarded by the necessity of a numerous consent.

A government may be composed of two or more of the simple forms abovementioned. Such is the British government. It would be an improper government for the United States; because it is inadequate to such an extent of territory; and because it is suited to an establishment of different orders of men. A more minute comparison between some parts of the British constitution, and some parts of the plan before us, may, perhaps, find a proper place in a subsequent period of our business.

What is the nature and kind of that government, which has been proposed for the United States, by the late convention? In its principle, it is purely democratical: but that principle is applied in different forms, in order to obtain the advantages, and exclude the inconveniences of the simple modes of government.

If we take an extended and accurate view of it, we shall find the streams of power running in different directions, in different dimensions, and at different heights, watering, adorning, and fertilizing the fields and meadows, through which their courses are led; but if we trace them, we shall discover, that they all originally flow from one abundant fountain. In this constitution, all authority is derived from THE PEOPLE.

Fit occasions will hereafter offer for particular remarks on the different parts of the plan. I have now to ask pardon of the house for detaining them so long.

OF THE STUDY OF LAW IN THE UNITED STATES
1790

(Text from No. 16 of the Bibliography)

PART I

CHAPTER I

INTRODUCTORY LECTURE OF THE STUDY OF THE LAW IN THE UNITED STATES

LADIES AND GENTLEMEN,

Though I am not unaccustomed to speak in publick, yet, on this occasion, I rise with much diffidence to address you. The character, in which I appear, is both important and new. Anxiety and selfdistrust are natural on my first appearance. These feelings are greatly heightened by another consideration, which operates with peculiar force. I never before had the honour of addressing a *fair* audience. Anxiety and selfdistrust, in an uncommon degree, are natural, when, for the first time, I address a fair audience so brilliant as this. There is one encouraging reflection, however, which greatly supports me. The whole of my very respectable audience is as much distinguished by its politeness, as a part of it is distinguished by its brilliancy. From that politeness, I shall receive—what I feel I need—an uncommon degree of generous indulgence.

It is the remark of an admired historian, that the high character, which the Grecian commonwealths long possessed among nations, should not be ascribed solely to their excellence in science and in government. With regard to these, other nations, he thinks, and particularly that of which he was writing the history, were entitled to a reputation, not less exalted and illustrious. But the opinion, he says, of the superiour endowments

and achievements of the Grecians has arisen, in a considerable degree, from their peculiar felicity in having their virtues transmitted to posterity by writers, who excelled those of every other country in abilities and elegance.

Alexander, when master of the world, envied the good fortune of Achilles, who had a Homer to celebrate his deeds.

The observation, which was applied to Rome by Sallust, and the force of which appears so strongly from the feelings of Alexander, permit me to apply, for I can apply it with equal propriety, to the States of America.

They have not, it is true, been long or much known upon the great theatre of nations: their immature age has not hitherto furnished them with many occasions of extending their renown to the distant quarters of the globe. But, in real worth and excellence, I boldly venture to compare them with the most illustrious commonwealths, which adorn the records of fame. When some future Xenophon or Thucydides shall arise to do justice to their virtues and their actions; the glory of America will rival—it will outshine the glory of Greece.

Were I called upon for my reasons why I deem so highly of the American character, I would assign them in a very few words—That character has been eminently distinguished by the love of liberty, and the love of law.

I rejoice in my appointment to this chair, because it gives me the best opportunities to discover, to study, to develop, and to communicate many striking instances, hitherto little known, on which this distinguished character is founded.

In free countries—in free countries, especially, that boast the blessing of a common law, springing warm and spontaneous from the manners of the people—Law should be studied and taught as a historical science.

The eloquent Rousseau complains, that the origin of nations is much concealed by the darkness or the distance of antiquity.

In many parts of the world, the fact may be as he represents

it; and yet his complaint may be without foundation: for, in many parts of the world, the origin of nations ought to be buried in oblivion. To succeeding ages, the knowledge of it would convey neither pleasure nor instruction.

With regard to the States of America, I am happy in saying, that a complaint concerning the uncertainty of their first settlements cannot be made with propriety or truth; though I must add, that, if it could be made with propriety or truth, it would be a subject of the deepest regret.

If the just and genuine principles of society can diffuse a lustre round the establishment of nations; that of the States of America is indeed illustrious. Fierce oppression, rattling, in her left hand, the chains of tyranny; and brandishing, in her right hand, the torch of persecution, drove our predecessors from the coasts of Europe: liberty, benevolent and serene, pointing to a cornucopia on one side, and to a branch of olive on the other, invited and conducted them to the American shores.

In discharging the duties of this office, I shall have the pleasure of presenting to my hearers what, as to the nations in the Transatlantick world, must be searched for in vain—an original compact of a society, on its first arrival in this section of the globe. How the lawyers, and statesmen, and antiquarians, and philosophers of Europe would exult, on discovering a similar monument of the Athenian commonwealth! and yet, perhaps, the historical monuments of the states of America are not, intrinsically, less important, or less worthy of attention, than the historical monuments of the states of Greece. The latter, indeed, are gilded with the gay decorations of fable and mythology; but the former are clothed in the neater and more simple garb of freedom and truth.

The doctrine of toleration in matters of religion, reasonable though it certainly is, has not been long known or acknowledged. For its reception and establishment, where it has been received and established, the world has been thought to owe much

to the inestimable writings of the celebrated Locke. To the inestimable writings of that justly celebrated man, let the tribute of applause be plenteously paid: but while immortal honours are bestowed on the name and character of Locke; why should an ungracious silence be observed, with regard to the name and character of Calvert?

Let it be known, that, before the doctrine of toleration was published in Europe, the practice of it was established in America. A law in favour of religious freedom was passed in Maryland, as early as the year one thousand six hundred and forty nine.

When my Lord Baltimore was afterwards urged—not by the spirit of freedom—to consent that this law should be repealed; with the enlightened principles of a man and a christian, he had the fortitude to declare, that he never would assent to the repeal of a law, which protected the natural rights of men, by ensuring to every one freedom of action and thought.

Indeed, the character of this excellent man has been too little known. He was truly the father of his country. To the legislature of Maryland he often recommended a maxim, which deserves to be written in letters of gold: “By concord a small colony may grow into a great and renowned nation; but, by dissensions, mighty and glorious kingdoms have declined and fallen ¹ into nothing.”

Similar to that of Calvert, has been the fate of many other valuable characters in America. They have been too little known. To those around them, their modest merits have been too familiar, perhaps too uniform, to attract particular and distinguished attention: by those at a distance, the mild and peaceful voice of their virtue has not been heard. But to their memories, justice should be done, as far as it can be done, by a just and grateful country.

In the European temple of fame, Willian Penn is placed by

¹ Chal. 363.

the side of Lycurgus. Will America refuse a temple to her patriots and her heroes? No; she will not. The glorious dome already rises. Its architecture is of the neatest and chastest order: its dimensions are spacious: its proportions are elegant and correct. In its front a number of niches are formed. In some of them statues are placed. On the left hand of the portal, are the names and figures of Warren, Montgomery, Mercer. On the right hand, are the names and figures of Calvert, Penn, Franklin. In the middle, is a niche of larger size, and decorated with peculiar ornaments. On the left side of it, are sculptured the trophies of war: on the right, the more precious emblems of peace. Above it, is represented the rising glory of the United States. It is without a statue and without a name. Beneath it, in letters very legible, are these words—"FOR THE MOST WORTHY." By the enraptured voice of grateful America—with the consenting plaudits of an admiring world, the designation is unanimously made. Late—very late—may the niche be filled.²

But while we perform the pleasing duties of gratitude, let not other duties be disregarded. Illustrious examples are displayed to our view, that we may imitate as well as admire. Before we can be distinguished by the same honours, we must be distinguished by the same virtues.

What are those virtues? They are chiefly the same virtues, which we have already seen to be descriptive of the American character—the love of liberty, and the love of law. But law and liberty cannot rationally become the objects of our love, unless they first become the objects of our knowledge. The same course of study, properly directed, will lead us to the knowledge of both. Indeed, neither of them can be known, because neither of them can exist, without the other. Without liberty, law loses its nature and its name, and becomes oppression. Without law,

² General Washington, then President of the United States, was present when this lecture was delivered.

liberty also loses its nature and its name, and becomes licentiousness. In denominating, therefore, that science, by which the knowledge of both is acquired, it is unnecessary to preserve, in terms, the distinction between them. That science may be named, as it has been named, the science of law.

The science of law should, in some measure, and in some degree, be the study of every free citizen, and of every free man. Every free citizen and every free man has duties to perform and rights to claim. Unless, in some measure, and in some degree, he knows those duties and those rights, he can never act a just and an independent part.

Happily, the general and most important principles of law are not removed to a very great distance from common apprehension. It has been said of religion, that though the elephant may swim, yet the lamb may wade in it. Concerning law, the same observation may be made.

The home navigation, carried on along the shores, is more necessary, and more useful too, than that, which is pursued through the deep and expanded ocean. A man may be a most excellent coaster, though he possess not the nautical accomplishments and experience of a Cook.

As a science, the law is far from being so disagreeable or so perplexed a study, as it is frequently supposed to be. Some, indeed, involve themselves in a thick mist of terms of art; and use a language unknown to all, but those of the profession. By such, the knowledge of the law, like the mysteries of some ancient divinity, is confined to its initiated votaries; as if all others were in duty bound, blindly and implicitly to obey. But this ought not to be the case. The knowledge of those rational principles on which the law is founded, ought, especially in a free government, to be diffused over the whole community.

In a free country, every citizen forms a part of the sovereign power: he possesses a vote, or takes a still more active part in the business of the commonwealth. The right and the duty of

giving that vote, the right and the duty of taking that share, are necessarily attended with the duty of making that business the object of his study and inquiry.

In the United States, every citizen is frequently called upon to act in this great publick character. He elects the legislative, and he takes a personal share in the executive and judicial departments of the nation. It is true, that a man, who wishes to be right, will, with the official assistance afforded him, be seldom under the necessity of being wrong: but it is equally true, and it ought not to be concealed, that the publick duties and the publick rights of every citizen of the United States loudly demand from him all the time, which he can prudently spare, and all the means which he can prudently employ, in order to learn that part, which it is incumbent on him to act.

On the publick mind, one great truth can never be too deeply impressed—that the weight of the government of the United States, and of each state composing the union, rests on the shoulders of the people.

I express not this sentiment now, as I have never expressed it heretofore, with a view to flatter: I express it now, as I have always expressed it heretofore, with a far other and higher aim—with an aim to excite the people to acquire, by vigorous and manly exercise, a degree of strength sufficient to support the weighty burthen, which is laid upon them—with an aim to convince them, that their duties rise in strict proportion to their rights; and that few are able to trace or to estimate the great danger, in a free government, when the rights of the people are unexercised, and the still greater danger, when the rights of the people are ill exercised.

At a general election, too few attend to the important consequences of voting or not voting; and to the consequences, still more important, of voting right or voting wrong.

The rights and the duties of jurors, in the United States, are great and extensive. No punishment can be inflicted without

the intervention of one—in much the greater number of cases, without the intervention of more than one jury. Is it not of immense consequence to the publick, that those, who have committed crimes, should not escape with impunity? Is it not of immense consequence to individuals, that all, except those who have committed crimes, should be secure from the punishment denounced against their commission? Is it not, then, of immense consequence to both, that jurors should possess the spirit of just discernment, to discriminate between the innocent and the guilty? This spirit of just discernment requires knowledge of, at least, the general principles of the law, as well as knowledge of the minute particulars concerning the facts.

It is true, that, in matters of law, the jurors are entitled to the assistance of the judges; but it is also true, that, after they receive it, they have the right of judging for themselves: and is there not to this right the great corresponding duty of judging *properly*?

Surely, therefore, those who discharge the important and, let me add, the dignified functions of jurors, should acquire, as far as they possibly can acquire, a knowledge of the laws of their country: for, let me add further, the dignity, though not the importance of their functions, will greatly depend on the abilities with which they discharge them.

But in the administration of justice—that part of government, which comes home most intimately to the business and the bosoms of men—there are judges as well as jurors; those, whose peculiar province it is to answer questions of law, as well as those, whose peculiar province it is to answer questions of fact.

In many courts—in many respectable courts within the United States, the judges are not, and, for a long time, cannot be gentlemen of professional acquirements. They may, however, fill their offices usefully and honourably, the want of professional acquirements notwithstanding. But can they do this, without a reasonable degree of acquaintance with the law?

We have already seen, that, in questions of law, the jurors are entitled to the assistance of the judges: but can the judges give assistance, without knowing what answers to make to the questions which the jury may propose? can those direct others, who themselves know not the road?

Unquestionably, then, those who fill, and those who expect to fill the offices of judges in courts, not, indeed, supreme, but rising in importance and in dignity above the appellation of inferior, ought to make the strongest efforts in order to obtain a respectable degree of knowledge in the law.

Let me ascend to a station more elevated still. In the United States, the doors of publick honours and publick offices are, on the broad principles of equal liberty, thrown open to all. A laudable emulation, an emulation that ought to be encouraged in a free government, may prompt a man to legislate as well as to decide for his fellow citizens—to legislate, not merely for a single State, but for the most august Union that has yet been formed on the face of the globe.

Should not he, who is to supply the deficiencies of the existing law, know when the existing law is defective? Should not he, who is to introduce alterations into the existing law, know in what instances the existing law ought to be altered?

The first and governing maxim in the interpretation of a statute, is to discover the meaning of those, who made it. The first rule, subservient to the principle of the governing maxim, is, to discover what the law was, before the statute was made. The inference, necessarily resulting from the joint operation of the maxim and the rule, is this, that in explaining a statute, the judges ought to take it for granted, that those, who made it, knew the antecedent law. This certainly implies, that a competent knowledge of, at least, the general principles of law, is of indispensable necessity to those, who under take the transcendent office of legislation.

I say, a knowledge of the general principles of law: for

though an accurate, a minute, and an extensive knowledge of its practice and particular rules be highly useful; yet I cannot conceive it to be absolutely requisite to the able discharge of a legislative trust.

Upon this distinction—and it is an important one—I cannot, perhaps, explain myself better, than by delivering the sentiments, which were entertained, some centuries ago, by a very learned and able judge—I mean the Lord Chancellor Fortescue.

In his excellent book, which he wrote in praise of the laws of England, he uses a number of arguments with his pupil, the prince of Wales, to excite him to the study of the law. Of these arguments the prince feels and acknowledges the full force. “But,” says he, “there is one thing, which agitates my mind in such a manner, that, like a vessel tossed in the tumultuous ocean, I know not how to direct my course: it is, that when I recollect the number of years, which the students of the law employ, before they acquire a sufficient degree of knowledge, I am apprehensive lest, in studies of this nature, I should consume the whole of my youth.”

To relieve his pupil from this anxiety, the chancellor cites a passage from the writings of Aristotle, to the following purpose: “We are then supposed to know a thing, when we apprehend its causes and its principles, as high as its original elements.”

This maxim the chancellor illustrates, by a reference to several of the sciences; and then draws this general conclusion. “Whoever knows the principles and elements of any science, knows the science itself—generally, at least, though not completely.” This conclusion he then applies to the science of law. “In the same manner, when you shall become acquainted with the principles and the elements of law, you may be denominated a lawyer. It will not be necessary for *you*, at a great expense of your time, to scrutinize curious and intricate points of discussion. I know the quickness of your apprehension, and the strength of your

genius. Though the legal knowledge accumulated in a series of twenty years is not more than sufficient to qualify one for being a judge; yet, in one year, you will be able to acquire a degree of it sufficient for you; without, even in that year, neglecting your other studies and improvements.”³

That a law education is necessary for gentlemen intended for the profession of the law, it would be as ridiculous to prove as to deny. In all other countries, publick institutions bear a standing testimony to this truth. Ought this to be the only country without them? Justinian, who did so much for the Roman law, was, as might have been expected, uncommonly attentive to form and establish a proper plan for studying it. All the modern nations of Europe have admitted the profession of their municipal jurisprudence, into their universities and other seminaries of liberal education.

In England, numerous and ample provisions have been made for this purpose. For young gentlemen, there are eight houses of chancery, where they learn the first elements of law. For those more advanced in their studies, there are four inns of court. “All these together,” says my Lord Coke,⁴ with conscious professional pride, “compose the most illustrious university in the world, for the profession of law.” Here lectures have been read, exercises have been performed, and degrees in the common law have been conferred, in the same manner as degrees in the civil and canon law, in other universities.

Besides all these, the Vinerian professorship of law has, not many years ago, been established in the university of Oxford. Of this professorship, the celebrated Sir William Blackstone was the first, who filled the chair.

A question deeply interesting to the American States now presents itself. Should the elements of a law education, particularly as it respects publick law, be drawn entirely from another

³ Fort. de Laud. c. 7, 8.

⁴ Rep. Pref. 20.

country—or should they be drawn, in part, at least, from the constitutions and governments and laws of the United States, and of the several States composing the Union?

The subject, to one standing where I stand, is not without its delicacy: let me, however, treat it with the decent but firm freedom, which befits an independent citizen, and a professor in independent states.

Surely I am justified in saying, that the principles of the constitutions and governments and laws of the United States, and the republics, of which they are formed, are materially different from the principles of the constitution and government and laws of England; for that is the only country, from the principles of whose constitution and government and laws, it will be contended, that the elements of a law education ought to be drawn. I presume to go further: the principles of our constitutions and governments and laws are materially *better* than the principles of the constitution and government and laws of England.

Permit me to mention one great principle, the *vital* principle I may well call it, which diffuses animation and vigour through all the others. The principle I mean is this, that the supreme or sovereign power of the society resides in the citizens at large; and that, therefore, they always retain the right of abolishing, altering, or amending their constitution, at whatever time, and in whatever manner, they shall deem it expedient.

By Sir William Blackstone, from whose Commentaries, a performance in many respects highly valuable, the elements of a foreign law education would probably be borrowed—by Sir William Blackstone, this great and fundamental principle is treated as a political chimera, existing only in the minds of some theorists; but, in practice, inconsistent with the dispensation of any government upon earth. Let us hear his own words.

'It must be owned that Mr. Locke and other theoretical writers have held, that "there remains still inherent in the people, a supreme power to alter the legislative, when they find the legislative act contrary to the trust reposed in them; for when such trust is abused, it is thereby forfeited, and devolves to those, who gave it." But, however just this conclusion may be in theory, we cannot admit it, nor argue from it, under any dispensation of government, at present actually existing. For this devolution of power to the people at large, includes a dissolution of the whole form of government established by that people; reduces all the members to their original state of equality; and, by annihilating the sovereign power, repeals all positive laws whatsoever before enacted. No human laws will therefore suppose a case, which at once must destroy all law, and compel men to build afresh upon a new foundation; nor will they make provision for so desperate an event, as must render all legal provisions ineffectual.' ⁵

And yet, even in England, there have been revolutions of government: there has been one within very little more than a century ago. The learned Author of the Commentaries admits the fact; but denies it to be a ground on which any constitutional principle can be established.

If the same precise "conjunction of circumstances" should happen a second time; the revolution of one thousand six hundred and eighty eight would form a precedent: but were only one or two of the circumstances, forming that conjunction, to happen again; "the precedent would fail us." ⁶

The three circumstances, which formed that conjunction, were these: 1. An endeavour to subvert the constitution, by breaking the original contract between the king and people. 2. Violation of the fundamental laws. 3. Withdrawing out of the kingdom.

Now, on this state of things, let us make a supposition—not

⁵ 1 Bl. Com. 161, 162.

⁶ Bl. Com. 245.

a very foreign one—and see the consequences, which would unquestionably follow from the principles of Sir William Blackstone. Let us suppose, that, on some occasion, a prince should form a conjunction of only two of the circumstances; for instance, that he should only violate the fundamental laws, and endeavour to subvert the constitution: let us suppose, that, instead of completing the conjunction, by withdrawing out of his government, he should only employ some forty or fifty thousand troops to give full efficacy to the two first circumstances: let us suppose all this—and it is surely not unnatural to suppose, that a prince, who shall form the two first parts of the conjunction, will not, like James the second, run away from the execution of them—let us, I say, suppose all this; and what, on the principles of Sir William Blackstone, would be the undeniable consequence? In the language of the Commentaries, “our precedent would fail us.”

But we have thought, and we have acted upon revolution principles, without offering them up as sacrifices at the shrine of revolution precedents.

Why should we not teach our children those principles, upon which we ourselves have thought and acted? Ought we to instil into their tender minds a theory, especially if unfounded, which is contradictory to our own practice, built on the most solid foundation? Why should we reduce them to the cruel dilemma of condemning, either those principles which they have been taught to believe, or those persons whom they have been taught to revere?

It is true, that the learned Author of the Commentaries concludes this very passage, by telling us, that “there are inherent, though latent powers of society, which no climate, no time, no constitution, no contract can ever destroy or diminish.” But what does this prove? not that revolution principles are, in his opinion, recognized by the English constitution; but that the English con-

stitution, whether considered as a law, or as a contract, cannot destroy or diminish those principles.

It is the opinion of many, that the revolution of one thousand six hundred and eighty eight did more than set a mere precedent, even in England. But be that as it may: a revolution principle certainly is, and certainly should be taught as a principle of the constitution of the United States, and of every State in the Union.

This revolution principle—that, the sovereign power residing in the people, they may change their constitution and government whenever they please—is not a principle of discord, rancour, or war: it is a principle of melioration, contentment, and peace. It is a principle not recommended merely by a flattering theory: it is a principle recommended by happy experience. To the testimony of Pennsylvania—to the testimony of the United States I appeal for the truth of what I say.

In the course of these lectures, my duty will oblige me to notice some other important principles, very particularly his definition and explanation of law itself, in which my sentiments differ from those of the respectable Author of the Commentaries. It already appears, that, with regard to the very first principles of government, we set out from different points of departure.

As I have mentioned Sir William Blackstone, let me speak of him explicitly as it becomes me. I cannot consider him as a zealous friend of republicanism. One of his survivors or successors in office has characterized him by the appellation of an antirepublican lawyer. On the subject of government, I think I can plainly discover his jealousies and his attachments.

For his jealousies, an easy and natural account may be given. In England, only one specimen of a commonwealth has been exhibited to publick examination; and that specimen was, indeed, an unfavourable one. On trial, it was found to be unsound

and unsatisfactory. It is not very surprising that an English lawyer, with an example so inauspicious before his eyes, should feel a degree of aversion, latent, yet strong, to a republican government.

An account, perhaps equally natural and easy, may be given for his attachments. With all reigning families, I believe, it is a settled maxim, that every revolution in government is unjustifiable, except the single one, which conducted them to the throne. The maxims of the court have always their diffusive influence. That influence, in favour of one species of government, might steal imperceptibly upon a mind, already jealous of another species, viewed as its rival, and as its enemy.

But, with all his prejudices concerning government, I have the pleasure of beholding him, in one conspicuous aspect, as a friend to the rights of men. To those rights, the author of the beautiful and animated dissertations concerning juries could not be cold or insensible.

As author of the Commentaries, he possessed uncommon merit. His manner is clear and methodical; his sentiments—I speak of them generally—are judicious and solid; his language is elegant and pure. In publick law, however, he should be consulted with a cautious prudence. But, even in publick law, his principles, when they are not proper objects of imitation, will furnish excellent materials of contrast. On every account, therefore, he should be read and studied. He deserves to be much admired; but he ought not to be implicitly followed.

This last admonitory remark should not be confined to Sir William Blackstone: it ought to be extended to all political writers—must I say?—almost without exception. This seems a severe sentence: but, if it is just, it must be pronounced. The cause of liberty, the rights of men require, that, in a subject essential to that cause and to those rights, error should be exposed, in order to be avoided.

The foundations of political truth have been laid but lately:

the genuine science of government, to no human science inferior in importance, is, indeed, but in its infancy: and the reason of this can be easily assigned. In the whole annals of the Transatlantick world, it will be difficult to point out a single instance of its legitimate institution: I will go further, and say, that, among all the political writers of the Transatlantick world, it will be difficult to point out a single model of its unbiassed theory.

The celebrated Grotius introduces what he says concerning the interesting doctrine of sovereignty, with the following information. "Learned men of our age, each of them handling the argument, rather according to the present interest of the affairs of his country, than according to truth, have greatly perplexed that, which, of itself, was not very clear."⁷ In this, the learned men of every other age have resembled those of the age of Grotius.

Indeed, it is astonishing, in what intricate mazes politicians and philosophers have bewildered themselves upon this subject. Systems have been formed upon systems, all fleeting, because all unfounded. Sovereignty has sometimes been viewed as a star, which eluded our investigation by its immeasurable height: sometimes it has been considered as a sun, which could not be distinctly seen by reason of its insufferable splendour.

In Egypt, the Nile is an object truly striking and grand. Its waters, rising to a certain height, and spreading to a certain distance, are the cause of fertility and plenty: swelling higher, and extending further, they produce devastation and famine. This stupendous stream, at some times so beneficial, at other times so destructive, has, at all times, formed a subject of anxious inquiry. To trace its source has been the unceasing aim of the mighty and the learned. Kings, attended with all the instruments of strength; sages, furnished with all the apparatus of philosophy, have engaged, with ardour, in the curious search;

⁷ Gro. b. i. c. 3, s. 5.

but their most patient and their most powerful enterprises have been equally vain.

The source of the Nile continued still unknown; and because it continued still unknown, the poets fondly fabled that it was to be found only in a superiour orb; and, of course, it was worshipped as a divinity.

We are told, however, that, at last, the source of the Nile has been discovered; and that it consists of—what might have been supposed before the discovery—a collection of springs small, indeed, but pure.

The fate of sovereignty has been similar to that of the Nile. Always magnificent, always interesting to mankind, it has become alternately their blessing and their curse. Its origin has often been attempted to be traced. The great and the wise have embarked in the undertaking; though seldom, it must be owned, with the spirit of just inquiry; or in the direction, which leads to important discovery. The source of sovereignty was still concealed beyond some impenetrable mystery; and, because it was concealed, philosophers and politicians, in this instance, gravely taught what, in the other, the poets had fondly fabled, that it must be something more than human: it was impiously asserted to be divine.

Lately, the inquiry has been recommenced with a different spirit, and in a new direction; and although the discovery of nothing very astonishing, yet the discovery of something very useful and true, has been the result. The dread and redoubtable sovereign, when traced to his ultimate and genuine source, has been found, as he ought to have been found, in the free and independent man.

This truth, so simple and natural, and yet so neglected or despised, may be appreciated as the first and fundamental principle in the science of government.

Besides the reasons which I have already offered, others may be suggested, why the elements of a law education ought to be

drawn from our own constitutions and governments and laws.

In every government, which is not altogether despotic, the institution of youth is of some publick consequence. In a republican government, it is of the greatest. Of no class of citizens can the education be of more publick consequence, than that of those, who are destined to take an active part in publick affairs. Those who have had the advantage of a law education, are very frequently destined to take this active part. This deduction clearly shows, that, in a free government, the principles of a law education are matters of the greatest publick consequence.

Ought not those principles to be congenial with the principles of government? By the revolution in the United States, a very great alteration—a very great improvement—as we have already seen, has taken place in our system of government: ought not a proportioned alteration—ought not a proportioned improvement to be introduced into our system of law education?

We have passed the Red Sea in safety: we have survived a tedious and dangerous journey through the wilderness: we are now in full and peaceable possession of the promised land: must we, after all, return to the flesh pots of Egypt? Is there not danger, that when one nation teaches, it may, in some instances, give the law to another?

A foundation of human happiness, broader and deeper than any that has heretofore been laid, is now laid in the United States: on that broad and deep foundation, let it be our pride, as it is our duty, to build a superstructure of adequate extent and magnificence.

But further; many parts of the laws of England can, in their own nature, have neither force nor application here. Such are all those parts, which are connected with ecclesiastical jurisdiction and an ecclesiastical establishment. Such are all those parts, too, which relate to the monarchical and aristocratick branches of the English constitution. Every one, who has perused the ponderous volumes of the law, knows how great a proportion of

them is filled with the numerous and extensive titles relating to those different subjects. Surely they need not enter into the elements of a law education in the United States.

I mean not, however, to exclude them from the subsequent investigation of those, who shall aspire at the character of accomplished lawyers. I only mean, that they ought not to be put into the hands of students, as deserving the same time and the same attention with other parts, which are to have a practical influence upon their future conduct in their profession.

The numerous regulations, in England, respecting the poor, and the more artificial refinements and distinctions concerning real estates, must be known; but known as much in order to be avoided as to be practised. The study of them, therefore, need not be so minute here as in England.

Concerning many other titles of the English law, similar observations might be made. The force and the extent of each will increase day after day, and year after year.

All combine in showing, that the *foundation*, at least, of a separate, an unbiassed, and an independent law education should be laid in the United States.

Deeply impressed with the importance of this truth, I have undertaken the difficult, the laborious, and the delicate task of contributing to lay that foundation. I feel most sensibly the weight of the duty, which I have engaged to perform. I will not promise to perform it successfully—as well as it might be performed: but I will promise to perform it faithfully—as well as I can perform it. I feel its full importance.

It may be asked—I am told it has been asked—is it proper that a judge of the supreme court of the United States should deliver lectures on law? It will not surely be suspected, that I deem too lightly of the very dignified and independent office, which I have the honour to hold, in consequence of the favourable sentiments entertained concerning me by those, whose favourable sentiments are indeed an honour. Had I thought that

the dignity of that seat could be disparaged by an alliance with this chair, I would have spurned it from me. But I thought, and I still think in a very different manner. By my acceptance of this chair, I think I shall certainly increase my usefulness, without diminishing my dignity, as a judge; and I think, that, with equal certainty, I shall, as a judge, increase my usefulness, I will not say my dignity, in this chair. He, who is well qualified to teach, is well qualified to judge; and he, who is well qualified to judge, is well qualified to teach. Every acquisition of knowledge—and it is my duty to acquire much—can, with equal facility, and with equal propriety, be applied to either office: for let it be remembered, that both offices view the same science as their common object.

Any interference as to the times of discharging the two offices—the only one that strikes me as possible—will be carefully avoided.

But it may be further asked—ought a judge to commit himself by delivering his sentiments in a lecture? To this question I shall give a very explicit answer: and in that answer I shall include the determination, which I have taken both as a professor and as a judge. When I deliver my sentiments from this chair, they shall be my honest sentiments: when I deliver them from the bench, they shall be nothing more. In both places I shall make—because I mean to support—the claim to integrity: in neither shall I make—because, in neither, can I support—the claim to infallibility.

My house of knowledge is, at present, too small. I feel it my duty, on many accounts, to enlarge it. But in this, as in every other kind of architecture, I believe it will be found, that he, who adds much, must alter some.

When the greatest judges, who ever adorned or illuminated a court of justice, have candidly and cheerfully acknowledged their mistakes; shall *I* be afraid of committing myself?

The learned and indefatigable Spelman, after all the im-

mense researches, which enabled him to prepare and publish his Glossary, published it with this remarkable precaution: "under the protestation of adding, retracting, correcting, and polishing, as, upon more mature consideration, shall seem expedient." ⁸

I hope I have now shown, that my acceptance of this chair, instead of diminishing, is calculated to increase my usefulness, as a judge. Does it derogate from my dignity? By no means, in my opinion.

Let things be considered as they really are. As a judge, I can decide whether property in dispute belongs to the man on my right hand, or to the man on my left hand. As a judge, I can pass sentence on a felon or a cheat. By doing both, a judge may be eminently useful in preserving peace, and in securing property.

Property, highly deserving security, is, however, not an end, but a means. How miserable, and how contemptible is that man, who inverts the order of nature, and makes his property, not a means, but an end!

Society ought to be preserved in peace; most unquestionably. But is this all? Ought it not to be improved as well as protected? Look at individuals: observe them from infancy to youth, from youth to manhood. Such is the order of Providence with regard to society. It is in a progressive state, moving on towards perfection. How is this progressive state to be assisted and accelerated? Principally by teaching the young "ideas how to shoot," and the young affections how to move.

What intrinsically can be more dignified, than to assist in preparing tender and ingenuous minds for all the great purposes, for which they are intended! What, I repeat it, can intrinsically be more dignified, than to assist in forming a future Cicero, or a future Bacon, without the vanity of one, and without the meanness of the other!

⁸ Sub protestatione de addendo, retrahendo, corrigendo, poliendo, prout opus fuerit et consultius videbitur.—Sir H. Spelman.

Let us see how things have been considered in other ages and in other countries.

Philip of Macedon, a prince highly distinguished by his talents, though not by his virtues, was fully sensible of the value of science. An heir was born to his kingdom and his throne. Could anything be more interesting to a father and a king? There was, it seems, a circumstance, which, in his opinion, enhanced the importance even of this event. His heir was born at a time, when he could receive a most excellent education.

Philip wrote to Aristotle the following letter: "You are to know that a son hath been born to us. We thank the gods, not so much for having bestowed him on us, as for bestowing him, at a time when Aristotle lives. We assure ourselves, that you will form him a prince worthy to be our successour, and a king worthy of Macedon."⁹

On Aristotle, accordingly, was devolved the charge of superintending the education of the young prince, "that he may be taught," said Philip, "to avoid those errors, which I have committed, and of which I now repent."

What price Alexander the Great set upon his education, before his mind was fatally poisoned by the madness of ambition, will appear by a letter from him to Aristotle, in which we find this sentiment: "I am not so anxious to appear superiour to the rest of mankind in power, as in the knowledge of excellent things."¹⁰ We see here the impetus of strong ambition; but it had not then taken its pernicious direction.

In the most shining periods of the Roman republick, men of the first distinction made the science of law their publick profession, and taught it openly in their houses as in so many schools. The first of these publick professors was Tiberius Coruncanius, who was raised to the office of chief pontiff—the highest in the whole scale of Roman honours. His example was

⁹ 1 *Lel. L. Phil.* 98.

¹⁰ 2 *Lel. L. Phil.* 126.

followed by many distinguished characters, among whom we find the celebrated names of the two Scevolæ, of Cato, of Brutus, and of others well known to such as are conversant with the writers of the classical ages. Even Cicero himself, after he had been consul of Rome, after he had had kings for his clients, projected this very employment, as his future "honour and ornament."¹¹

Whether, therefore, we consider the intrinsick or the external dignity of this chair; we shall find that it is, by no means, beneath an alliance with the highest offices and the highest characters.

If any example, set by me, can be supposed to have the least publick influence; I hope it will be in raising the care of education to that high degree of respectability, to which, every where, but especially in countries that are free, it has the most unimpeachable title.

I have been zealous—I hope I have not been altogether unsuccessful—in contributing the best of my endeavours towards forming a system of government; I shall rise in importance, if I can be equally successful—I will not be less zealous—in contributing the best of my endeavours towards forming a system of education likewise, in the United States. I shall rise in importance, because I shall rise in usefulness.

What are laws without manners? How can manners be formed, but by a proper education?¹²

Methinks I hear one of the female part of my audience exclaim—What is all this to us? We have heard much of societies, of states, of governments, of laws, and of a law education. Is everything made for your sex? Why should not we have a share? Is our sex less honest, or less virtuous, or less wise than yours?

¹¹ Decus et ornamentum. De orat. l. i. c. 45.

¹² The ancient wisdom of the best times did always make a just complaint, that states were too busy with their laws; and too negligent in point of education. 2. Ld. Bacon 423.

Will any of my brethren be kind enough to furnish me with answers to these questions?—I must answer them, it seems, myself? and I mean to answer them most sincerely.

Your sex is neither less honest, nor less virtuous, nor less wise than ours. With regard to the two first of these qualities, a superiority, on our part, will not be pretended: with regard to the last, a pretension of superiority cannot be supported.

I will name three women; and I will then challenge any of my brethren to name three men superiour to them in vigour and extent of abilities. My female champions are, Semiramis of Nineveh; Zenobia, the queen of the East; and Elizabeth of England. I believe it will readily be owned, that three men of superiour active talents cannot be named.

You will please, however, to take notice, that the issue, upon which I put the characters of these three ladies, is not that they were *accomplished*; it is, that they were *able* women.

This distinction immediately reminds you, that a woman may be an able, without being an accomplished female character.

In this latter view, I did not produce the three female characters I have mentioned. I produced them as women, merely of distinguished abilities—of abilities equal to those displayed by the most able of our sex.

But would you wish to be tried by the qualities of our sex? I will refer you to a more proper standard—that of your own.

All the three able characters, I have mentioned, had, I think, too much of the masculine in them. Perhaps I can conjecture the reason. Might it not be owing, in a great measure—might it not be owing altogether to the masculine employments, to which they devoted themselves?

Two of them were able warriors: all of them were able queens; but in all of them, we feel and we regret the loss of the lovely and accomplished woman: and let me assure you, that, in the estimation of our sex, the loss of the lovely and ac-

complished woman is irreparable, even when she is lost in the queen.

For these reasons, I doubt much, whether it would be proper that you should undertake the management of publick affairs. You have, indeed, heard much of publick government and publick law: but these things were not made for themselves: they were made for something better; and of that something better, you form the better part—I mean society—I mean particularly domestick society: there the lovely and accomplished woman shines with superiour lustre.

By some politicians, society has been considered as only the scaffolding of government; very improperly, in my judgment. In the just order of things, government is the scaffolding of society: and if society could be built and kept entire without government, the scaffolding might be thrown down, without the least inconvenience or cause of regret.

Government is, indeed, highly necessary; but it is highly necessary to a fallen state. Had man continued innocent, society, without the aids of government, would have shed its benign influence even over the bowers of Paradise.

For those bowers, how finely was your sex adapted! But let it be observed, that every thing else was finished, before Heaven's "last best gift" was introduced: let it be also observed, that, in the pure and perfect commencement of society, there was a striking difference between the only two persons, who composed it. His "large fair front and eye sublime" declared that, "for contemplation and for valour he was formed."

"For softness, she, and sweet attractive grace.
Grace was in all her steps, Heav'n in her eye;
In every gesture, dignity and love.
A thousand decencies unceasing flow'd
From all her words and actions, mixt with—
—mild compliance."

Her accomplishments indicated her destination. Female beauty is the expression of female virtue. The purest complexion, the finest features, the most elegant shape are uninteresting and insipid, unless we can discover, by them, the emotions of the mind. How beautiful and engaging, on the other hand, are the features, the looks, and the gestures, while they disclose modesty, sensibility, and every sweet and tender affection! When these appear, there is a "Soul upon the countenance."

These observations enhance the value of beauty; and show, that to possess and to admire it, is to possess and to admire the exhibition of the finest qualities, intellectual and moral. These observations do more: they show how beauty may be acquired, and improved, and preserved. When the beauties of the mind are cultivated, the countenance becomes beautifully eloquent in expressing them.

I know very well, that mere complexion and shape enter into the composition of beauty: but they form beauty only of a lower order. Separate them from animation—separate them from sensibility—separate them from virtue: what are they? The ingredients that compose a beautiful picture or a beautiful statue. I say too much; for the painters and the statuaries know, that expression is the soul of mimic as well as of real life.

As complexion and shape will not supply the place of the higher orders of beauty; so those higher orders have an independent existence, after the inferior influence of complexion and shape are gone. Though the bloom of youth be faded; though the impressions of time be distinctly marked; yet, while the countenance continues to be enlivened by the beaming emanations of the mind, it will produce, in every beholder possessed of sensibility and taste, an effect far more pleasing, and far more lasting, than can be produced by the prettiest piece of uninformed nature, however florid, however regular, and however young.

How many purposes may be served at once, if things are

done in the proper way! I have been giving a recipe for the improvement and preservation of female beauty; but I find that I have, at the same time, been delivering instructions for the culture and refinement of female virtue; and have been pointing at the important purposes, which female virtue is fitted and intended to accomplish.

If nature evinces her designs by her works; you were destined to embellish, to refine, and to exalt the pleasures and virtues of social life.

To protect and to improve social life, is, as we have seen, the end of government and law. If, therefore, you have no share in the formation, you have a most intimate connexion with the effects, of a good system of law and government.

That plan of education, which will produce, or promote, or preserve such a system, is, consequently, an object to you peculiarly important.

But if you would see such a plan carried into complete effect, you must, my amiable hearers, give it your powerful assistance. The pleasing task of forming your daughters is almost solely yours. In my plan of education for your sons, I must solicit you to cooperate. Their virtues, in a certain proportion—the refinement of their virtues, in a much greater proportion, must be moulded on your example.

In your sex, too, there is a natural, an easy, and, often, a pure flow of diction, which lays the best foundation for that eloquence, which, in a free country, is so important to ours.

The style of some of the finest orators of antiquity was originally formed on that of their mothers, or of other ladies, to whose acquaintance they had the honour of being introduced.

I have already mentioned the two Scevolæ among the illustrious Roman characters. One of them was married to Lælia, a lady, whose virtues and accomplishments rendered her one of the principal ornaments of Rome. She possessed the elegance of language in so eminent a degree, that the first speakers of the

age were ambitious of her company. The graces of her unstudied elocution were the purest model, by which they could refine their own.

Cicero was in the number of those, who improved by the privilege of her conversation. In his writings, he speaks in terms of the warmest praise concerning her singular talents. He mentions also the conversation of her daughters and grand daughters, as deserving particular notice.

The province of early education by the female sex, was deemed, in Rome, an employment of so much dignity, that ladies of the first rank did not disdain it. We find the names of Aurelia and Attia, the mothers of Julius Cæsar and of Augustus, enumerated in the list of these honourable patronesses of education.

The example of the highly accomplished Cornelia, the daughter of the great Africanus, and the mother of the Gracchi, deserves uncommon attention. She shone, with singular lustre, in all those endowments and virtues that can dignify the female character.

She was, one day, visited by a lady of Campania, who was extremely fond of dress and ornament. This lady, after having displayed some very rich jewels of her own, expressed a wish to be favoured with the view of those which Cornelia had; expecting to see some very superb ones, in the toilet of a lady of such distinguished birth and character. Cornelia diverted the conversation till her sons came into the room: "These are my jewels," said she, presenting them to the Campanian lady.

Cicero had seen her letters: his expressions concerning them are very remarkable. "I have read," says he, "the letters of Cornelia, the mother of the Gracchi; and it appears, that her sons were not so much nourished by the milk, as formed by the style of their mother."¹³

¹³ Legimus epistolas Corneliæ, matris Gracchorum: apparet filios non tam in gremio educatos, quam in sermone matris. Cic. de clar. orat. c. 58.

You see now, my fair and amiable hearers, how deeply and nearly interested you are in a proper plan of law education. By some of you, whom I know to be well qualified for taking in it the share, which I have described, that share will be taken. By the younger part of you, the good effects of such a plan will, I hope, be participated: for those of my pupils, who themselves shall become most estimable, will treat you with the highest degree of estimation.

OF THE GENERAL PRINCIPLES OF LAW AND OBLIGATION

(Text from No. 16 of Bibliography)

CHAPTER II

OF THE GENERAL PRINCIPLES OF LAW AND OBLIGATION

Order, proportion, and fitness pervade the universe. Around us, we see; within us, we feel; above us, we admire a rule, from which a deviation cannot, or should not, or will not be made.

On the inanimate part of the creation, are impressed the continued energies of motion and of attraction, and other energies, varied and yet uniform, all designated and ascertained. Animated nature is under a government suited to every genus, to every species, and to every individual, of which it consists. Man, the *nexus utriusque mundi*, composed of a body and a soul, possessed of faculties intellectual and moral, finds or makes a system of regulations, by which his various and important nature, in every period of his existence, and in every situation, in which he can be placed, may be preserved, improved, and perfected. The celestial as well as the terrestrial world knows its exalted but prescribed course. This angels and the spirits of the just, made perfect, do "clearly behold, and without any swerving observe." Let humble reverence attend us as we proceed. The great and incomprehensible Author, and Preserver, and Ruler of all things—he himself works not without an eternal decree.

Such—and so universal is law. "Her seat," to use the sublime language of the excellent Hooker,¹ "is the bosom of God; her voice, the harmony of the world; all things in heaven and earth do her homage; the very least as feeling her care, and the great-

¹ Hooker 34.

est as not exempted from her power. Angels and men, creatures of every condition, though each in different sort and manner, yet all with uniform consent, admiring her as the mother of their peace and joy."

Before we descend to the consideration of the several kinds and parts of this science, so dignified and so diversified, it will be proper, and it will be useful, to contemplate it in one general and comprehensive view; and to select some of its leading and luminous properties, which will serve to guide and enlighten us in that long and arduous journey, which we now undertake.

It may, perhaps, be expected, that I should begin with a regular definition of law. I am not insensible of the use, but, at the same time, I am not insensible of the abuse of definitions. In their very nature, they are not calculated to extend the acquisition of knowledge, though they may be well fitted to ascertain and guard the limits of that knowledge, which is already acquired. By definitions, if made with accuracy—and consummate accuracy ought to be their indispensable characteristick—ambiguities in expression, and different meanings of the same term, the most plentiful sources of error and of fallacy in the reasoning art, may be prevented; or, if that cannot be done, may be detected. But, on the other hand, they may be carried too far, and, unless restrained by the severest discipline, they may produce much confusion and mischief in the very stations, which they are placed to defend.

You have heard much of the celebrated distribution of things into genera and species. On that distribution, Aristotle undertook the arduous task of resolving all reasoning into its primary elements; and he erected, or thought he erected, on a single axiom, a larger system of abstract truths, than were before invented or perfected by any other philosopher. The axiom, from which he sets out, and in which the whole terminates, is, that whatever is predicated of a genus, may be predicated of every species contained under that genus, and of every individual con-

tained under every such species.² On that distribution likewise, the very essence of scientifick definition depends: for a definition, strictly and logically regular, “must express the genus of the thing defined, and the specific difference, by which that thing is distinguished from every other species belonging to that genus.”³

From this definition of a definition—if I may be pardoned for the apparent play upon the word—it evidently appears that nothing can be defined, which does not denote a species; because that only, which denotes a species, can have a specific difference.

But further: a specific difference may, in fact, exist; and yet language may furnish us with no words to express it. Blue is a species of color; but how shall we express the specific difference, by which blue is distinguished from green?

Again: expression, which signify things simple, and void of all composition, are, from the very force of the terms, unsusceptible of definition. It was one of the capital defects of Aristotle’s philosophy, that he attempted and pretended to define the simplest things.

Here it may be worth while to note a difference between our own abstract notions, and objects of nature. The former are the productions of our own minds; we can therefore define and divide them, and distinctly designate their limits. But the latter run so much into one another, and their essences, which discriminate them, are so subtile and latent, that it is always difficult, often impossible, to define or divide them with the necessary precision. We are in danger of circumscribing nature within the bounds of our own notions, formed, frequently, on a partial or defective view of the object before us. Fettered thus at our outset, we are restrained in our progress, and govern the course of our inquiries, not by the extent or variety of our

² 1 Gill. (4to.) 690.

³ Reid’s Ess. Int. 10.11.

subject, but by our own preconceived apprehensions concerning it.

This distinction between the objects of nature and our own abstract notions suggests a practical inference. Definitions and divisions in municipal law, the creature of man, may be more useful, because more adequate and more correct, than in natural objects.

By some philosophers, definition and division are considered as the two great nerves of science. But unless they are marked by the purest precision, the fullest comprehension, and the most chastised justness of thought, they will perplex, instead of unfolding—they will darken, instead of illustrating, what is meant to be divided or defined. A defect or inaccuracy, much more an impropriety, in a definition or division, more especially of a first principle, will spread confusion, distraction, and contradictions over the remotest parts of the most extended system.

Errours in science, as well as in life, proceed more frequently from wrong principles, than from ill drawn consequences. *Prava regula prima* may be the parent of the most fatal enormities.

The higher an edifice is raised, the more compactly it is built, the more precisely it is carried up in a just direction—in proportion to all these excellencies, a rent in the foundation will increase and become dangerous.

The case is the same with a radical error at the foundation of a system. The more accurately and the more ingeniously men reason, and the farther they pursue their reasonings, from false principles, the more numerous and the more inveterate will their inconsistencies, nay, their absurdities be. One advantage, however, will result—those absurdities and those inconsistencies will be more easily traced to their proper source. When the string of a musical instrument has a fault only in one place, you know immediately how and where to find and correct it.

Influenced by these admonitory truths, I hesitate, at present, to give a definition of law. My hesitation is increased by the

fate of the far greatest number of those, who have hitherto attempted it. Many, as it is natural to suppose, and laboured have been the efforts to infold law within this scientifick circle; but little satisfaction—little instruction has been the result. Almost every writer, sensible of the defects, the inaccuracies, or the improprieties of the definitions that have gone before him, has endeavoured to supply their place with something, in his own opinion, more proper, more accurate, and more complete. He has been treated by his successours, as his predecessours have been treated by him: and his definition has had only the effect of adding one more to the lengthy languid list. This I know, because I have taken the trouble to read them in great numbers; but because I have taken the trouble to read them, I will spare you the trouble of hearing them—at least, the greatest part of them.

Some of them, indeed, have a claim to attention: one, in particular, will demand it, for reasons striking and powerful—I mean that given by the Commentator on the laws of England.

Let us proceed carefully, patiently, and minutely to examine it. If I am not deceived, the examination will richly compensate all the time, and trouble, and investigation, that will be allotted to it; for it will be uncommonly fruitful in the principles, and in the consequences of the great truths and important disquisitions, which it will lead in review before us.

“Law,” says he, “in its most general and comprehensive sense, signifies a rule of action.”⁴ In its proper signification, a rule is an instrument, by which a right line—the shortest and truest of all—may be drawn from one point to another. In its moral or figurative sense, it denotes a principle or power, that directs a man surely and concisely to attain the end, which he proposes.

Law is called a rule, in order to distinguish it from a⁵ sudden, a transient, or a particular order: uniformity, permanency, stability, characterize a law.

⁴ 1 Bl. Com. 38.

⁵ 1 Bl. Com. 44.

Again; law is called a rule, to denote that it carries along with it a power and principle of obligation. Concerning the nature and the cause of obligation, much ingenious disputation has been held by philosophers and writers on jurisprudence. Indeed the sentiments entertained concerning it have been so various, that an account of them would, in the estimation of my Lord Kaims, be a "delicate historical morsel."

This interesting subject will claim and obtain our attention, next after what we have to say concerning law in general.

When we speak of a rule with regard to human conduct, we imply two things. 1. That we are susceptible of direction. 2. That, in our conduct, we propose an end. The brute creation act not from design. They eat, they drink, they retreat from the inclemencies of the weather, without considering what their actions will ultimately produce. But we have faculties, which enable us to trace the connexion between actions and their effects; and our actions are nothing else but the steps which we take, or the means which we employ, to carry into execution the effects which we intend.

Hooker, I think, conveys a fuller and stronger conception of law, when he tells us, that "it assigns unto each thing the kind, that it moderates the force and power, that it appoints the form and measure of working."⁶ Not the direction merely, but the kind also, the energy, and the proportion of actions is suggested in this description.

Some are of opinion, that law should be defined⁷ "a rule of acting or not acting;" because actions may be forbidden as well as commanded. But the same excellent writer, whom I have just now cited, gives a very proper answer to this opinion, and shows the addition to be unnecessary, by finely pursuing the metaphor, which we have already mentioned. "We must not suppose that there needeth one rule to know the good, and an-

⁶ Hooker 2.

⁷ Daws. Orig. Laws, 4. 14.

other to know the evil by. For he that knoweth what is straight, doth even thereby discern what is crooked. Goodness in actions is like unto straightness; wherefore that which is well done, we might term right.”⁸

After this dry description of the literal and metaphorical meaning of a rule, permit me to relax your strained attention by a critical remark. In the philosophy of the human mind, it is impossible altogether to avoid metaphorical expressions. Our first and most familiar notions are suggested by material objects; and we cannot speak intelligibly of those that are immaterial, without continual allusions to matter and the qualities of matter.

Besides, in teaching moral science, the use of metaphors is not only necessary, but, if prudent, and honest, and guarded, it is highly advantageous. Nature has endowed us with the faculty of imagination, that we may be enabled to throw warming as well as enlightening rays upon truth—to embellish, to recommend, and to enforce it. Truth may, indeed, by reasoning, be rendered evident to the understanding; but it cannot reach the heart, unless by means of the imagination. To the imagination metaphors are addressed.

From this short excursion into the field of criticism, let us return to our legal tract. Law is a rule “prescribed.” A simple resolution, confined within the bosom of the legislator, without being notified, in some fit manner, to those for whose conduct it is to form a rule, can never, with propriety, be termed a law.

There are many ways by which laws may be made sufficiently known. They may be printed and published. Written copies of them may be deposited in publick libraries, or other places, where every one interested may have an opportunity of perusing them. They may be proclaimed in general meetings of the people. The knowledge of them may be disseminated by long and universal practice. “Confirmed custom,” says a writer on Roman jurisprudence, “is deservedly considered as a law. For

⁸ Hooker II.

since written laws bind us for no other reason than because they are received by the judgment of the people; those laws, which the people have approved, without writing, are also justly obligatory on all. For where is the difference, whether the people declare their will by their suffrage, or by their conduct? This kind of law is said to be established by ⁹ manners.” ¹⁰

Of all yet suggested, the mode for the promulgation of human laws by custom seems the most significant, and the most effectual. It involves in it internal evidence, of the strongest kind, that the law has been introduced by common *consent*; and that this consent rests upon the most solid basis—experience as well as opinion. This mode of promulgation points to the strongest characteristick of liberty, as well as of law. For a consent thus practically given, must have been given in the freest and most unbiassed manner.

With pleasure you anticipate the prospect of a species of law, to which these remarks have already directed your attention. If it were asked—and it would be no improper question—who of all the makers and teachers of law have formed and drawn after them the most, the best, and the most willing disciples; it might be not untruly answered—custom.

Laws may be promulgated by reason and conscience, the divine monitors within us. They are thus known as effectually, as by words or by writing: indeed they are thus known in a manner more noble and exalted. For, in this manner, they may be said to be engraven by God on the hearts of men: in this manner, he is the promulgator as well as the author of natural law.

If a simple resolution cannot have the force of a law before it be promulgated: we may certainly hazard the position—that it cannot have the force of a law, before it be made; in other words, that *ex post facto* instruments, claiming the title and character of laws, are impostors.

⁹ D. 1. 1. t. 3, 32, p. 1.

¹⁰ The first written laws in Greece were given only six centuries before the christian era.—I. Gill. 7. (4to.)

Peculiarly striking, upon this subject, are the sentiments of the criminal and unfortunate Strafford. I call him criminal, because he acted; I call him unfortunate, because he suffered, against the laws of his country. His sentiments must make a deep impression upon others; because, when he spoke them, he must have been deeply impressed with them himself. When he spoke them, he stood under a bill of attainder, suspended only by the slender thread of political justice, and ready, like the sword of Damocles, to fall on his devoted head. "Do we not live by laws? And must we be punished by laws before they are made? Far better were it to live by no laws at all, than to put this necessity of divination upon a man, and to accuse him of the breach of a law, before it be a law at all." ¹¹

In criminal jurisprudence, a Janus statute, with one face looking backward, and another looking forward, is a monster indeed.

The definition of law in the Commentaries proceeds in this manner. "Law is that rule of action, which is prescribed by some superiour, and which the inferiour is bound to obey." A superiour! Let us make a solemn pause—Can there be *no* law without a superiour? Is it *essential* to law, that inferiority should be involved in the obligation to obey it? Are these distinctions at the root of *all* legislation?

There is a law, indeed, which flows from the Supreme of being—a law, more distinguished by the goodness, than by the power of its allgracious Author. But there are laws also that are human; and does it follow, that, in these, a character of superiority is inseparably attached to him, who makes them; and that a character of inferiority is, in the same manner, inseparably attached to him, for whom they are made? What is this superiority? Who is this superiour? By whom is he constituted? Whence is his superiority derived? Does it flow from a source that is human? Or does it flow from a source that is divine?

¹¹ Whitlocke 230.

From a human source it cannot flow; for no stream issuing from thence can rise higher than the fountain.

If the prince, who makes laws for a people, is superiour, in the terms of the definition, to the people, who are to obey; how comes he to be vested with the superiority over them.

If I mistake not, this notion of superiority, which is introduced as an *essential* part in the definition of a law—for we are told that a law *always*¹² supposes some superiour, who is to make it—this notion of superiority contains the germ of the divine right—a prerogative impiously attempted to be established—of princes, arbitrarily to rule; and of the corresponding obligation—a servitude tyrannically attempted to be imposed—on the people, implicitly to obey.

Despotism, by an artful use of “superiority” in politicks; and scepticism, by an artful use of “ideas” in metaphysicks, have endeavoured—and their endeavours have frequently been attended with too much success—to destroy all true liberty and sound philosophy. By their baneful effects, the science of man and the science of government have been poisoned to their very fountains. But those destroyers of others have met, or must meet, with their own destruction.

We now see, how necessary it is to lay the foundations of knowledge deep and solid. If we wish to build upon the foundations laid by another, we see how necessary it is cautiously and minutely to examine them. If they are unsound, we see how necessary it is to remove them, however venerable they may have become by reputation; whatever regard may have been diffused over them by those who laid them, by those who built on them, and by those who have supported them.

But was Sir William Blackstone a votary of despotick power? I am far from asserting that he was. I am equally far from believing that Mr. Locke was a friend to infidelity. But yet it is unquestionable, that the writings of Mr. Locke have facilitated

¹² 1 Bl. Com. 43.

the progress, and have given strength to the effects of scepticism.

The high reputation, which he deservedly acquired for his enlightened attachment to the mild and tolerating doctrines of christianity, secured to him the esteem and confidence of those, who were its friends. The same high and deserved reputation inspired others of very different views and characters, with a design to avail themselves of its splendour, and, by that means, to diffuse a fascinating kind of lustre over their own tenets of a dark and sable hue. The consequence has been, that the writings of Mr. Locke, one of the most able, most sincere, and most amiable assertors of christianity and true philosophy, have been perverted to purposes, which he would have deprecated and prevented, had he discovered or foreseen them.

Berkeley, the celebrated bishop of Cloyne, wrote his *Principles of human Knowledge*—a book intended to disprove the existence of matter—with the express view of banishing scepticism both from science and from religion. He was even sanguine in his expectations of success. But the event has proved that he was egregiously mistaken; for it is evident, from the use to which later authors have applied it, that his system leads directly to universal scepticism.

Similar, though in an inferiour degree, have been, and may be, the fate and the influence of the writings and character of Sir William Blackstone, even admitting that he was as much a friend to liberty, as Locke and Berkeley were friends to religion.

But in prosecuting the study of law on liberal principles and with generous views, our business is much less with the character of the Commentaries or of their author, than with the doctrines which they contain. If the doctrines, insinuated in the definition of law, can be supported on the principles of reason and science; the defence of other principles, which I have thought to be those of liberty and just government, becomes—I am sorry to say it—a fruitless attempt.

Sir William Blackstone, however, was not the first, nor has he been the last, who has defined law upon the same principles, or upon principles similar and equally dangerous.

This subject is of such radical importance, that it will be well worth while to trace it as far as our materials can carry us; for error as well as truth should be examined historically, and pursued back to its original springs.

By comparing what is said in the Commentaries on this subject, with what is mentioned concerning it in the system of morality, jurisprudence, and politicks written by Baron Puffendorff, we shall be satisfied that, from the sentiments and opinions delivered in the last mentioned performance, those in the first mentioned one have been taken and adopted. "A law," says Puffendorff, "is the command of a superiour."¹³ "A law," says Sir William Blackstone, "always supposes some superiour, who is to make it."¹⁴

The introduction of superiority, as a necessary part of the definition of law, is traced from Sir William Blackstone to Puffendorff. This definition of Puffendorff is substantially the same with that of Hobbes. "A law is the command of him or them, that have the sovereign power, given to those that be his or their subjects."¹⁵ It is substantially the same also with that of Bishop Saunderson. "Law is a rule of action, imposed on a subject, by one who has power over him."¹⁶

Let us now inquire what is meant by superiority, that we may be able to ascertain and recognize those qualities, inherent or derivative, which entitle the superiour or sovereign to the transcendent power of imposing laws.

We can distinguish two kinds of superiority. 1. A superiority merely of power. 2. A superiority of power, accompanied with a right to exercise that power. Is the first sufficient to entitle its

¹³ Puff. B. 1, c. 2, s. 6, p. 16. B. 1, c. 6, s. 1, 2, p. 56, 57.

¹⁴ 1. Bl. Com. 43.

¹⁵ 3. Dagge 95, 96.

¹⁶ Daws. Orig. L. 3, cites Saund. Præl. 5, s. 3.

possessor to the character and office of a legislator? If we subscribe to the doctrines of Mr. Hobbes, we shall say, that it is. "To those," says he, "whose power is irresistible, the dominion of all men adhereth naturally, by their excellence of power." ¹⁷

This position, strange as it is, has had its advocates in ancient as well as in modern times. Even the accomplished Athenians, who excluded it from their municipal code, seem to have considered it as part of the received law of nations. "We follow," says their ambassadour in the name of his commonwealth, "the common nature and genius of mankind, which appoints those to be masters, who are superiour in strength. We have not made this law; nor are we the first, who have appealed to it. We received it from antiquity: we are determined to transmit it to the most distant futurity: and we claim and use it in our own case." ¹⁸

Brennus, at the head of his victorious and ferocious Gauls, with more conciseness, and with a less striking inconsistency of character, tells the vanquished Romans "*omnia fortium esse.*" ¹⁹ Every thing belongs to the bold and the strong.

The prudent Plutarch thinks it "the first and principal law of nature, that he whose circumstances require protection and deliverance, should admit him for his ruler, who is able to protect and deliver him." ²⁰

For us, it is sufficient, as men, as citizens, and as states, to say, that power is nothing more than the right of the strongest, and may be opposed by the same right, by the same means, and by the same principles, which are employed to establish it. Bare force, far from producing an obligation to obey, produces an obligation to resist.

Others, unwilling to rest the office of legislation and the right of sovereignty simply on superiority of power, have to this qual-

¹⁷ De Cive 187. (Puff. 64.)

¹⁸ Puff. 65. (Thucyd. l. 5, c. 105) 1. Anac. 351.

¹⁹ Puff. 65. (Livy.)

²⁰ Puff. 65. (Plut. in Pelop.)

ity superadded preeminence or superiour excellence of nature.

Let it be remembered all along, that I am examining the doctrine of superiority, as applied to human laws, the proper and immediate object of investigation in these lectures. Of the law that is divine, we shall have occasion, at another time, to speak, with the reverence and gratitude which becomes us.

"It is a law of nature," says Dionysius of Halicarnassus, "common to all men, and which no time shall disannul or destroy, that those, who have more strength and *excellence*, shall bear rule over those, who have less."²¹ The favourers of this opinion are unfortunate, both in the illustrations, by which they attempt to evince it; and in the inferences, to which they contend it gives rise.

Because Cicero, by a beautiful metaphor, describes the government of the other powers of the mind as assigned, by nature, to the understanding; does it follow that, in strict propriety of reasoning, the right of legislation is annexed, without any assignment, to superiour excellence?

Aristotle, it seems, has said, that if a man *could* be found, excelling in *all* virtues, such an one would have a *fair title* to be king. These words may well be understood as conveying, and probably were intended to convey, only this unquestionable truth—that excellence in every virtue furnished the strongest recommendation, in favour of its happy possessor, *to be elected* for the exercise of authority. If so, the opinion of Aristotle is urged without a foundation properly laid in the fact.

But let us suppose the contrary: let us suppose it to be the judgment of Aristotle, that the person, whom he characterizes, derived his right to the exercise of power, not from the donation made to him by a voluntary election, but solely from his superiour talents and excellence; shall the judgment of Aristotle supersede inquiry into its reasonableness? Shall the judgment of Aristotle, if found, on inquiry, to be unreasonable, silence all

²¹ Puff. 65. (Dion Hal. b. 1, c. 5.)

reprehension or confutation? Decent respect for authority is favourable to science. Implicit confidence is its bane. Let us adopt—for it is necessary, in the cause of truth and freedom, that we should adopt—the manly expostulation, which the ardent pursuit of knowledge drew from the great Bacon—"Why should a few received authors stand up like Hercules's columns, beyond which there should be no sailing or discovery?"

To Aristotle, more than to any other writer, either ancient or modern, this expostulation is strictly applicable. Hear what the learned Grotius says on this subject. "Among philosophers, Aristotle deservedly holds the chief place, whether you consider his method of treating subjects, or the acuteness of his distinctions, or the weight of his reasons. I could only wish that the authority of this great man had not, for some ages past, degenerated into tyranny; so that truth, for the discovery of which Aristotle took so great pains, is now oppressed by nothing more than by the very name of Aristotle." ²²

Guided and supported by the sentiments and by the conduct of Grotius and Bacon, let us proceed, with freedom and candour combined, to examine the judgment—though I am very doubtful whether it was the judgment—of Aristotle, that the right of sovereignty is founded on superiour excellence.

To that superiority, which attaches the right to command, there must be a corresponding inferiority, which imposes the obligation to obey. Does this right and this obligation result from every kind and every degree of superiority in one, and from every kind and every degree of inferiority in another? How is excellence to be rated or ascertained?

Let us suppose three persons in three different grades of excellence. Is he in the lowest to receive the law immediately from him in the highest? Is he in the highest to give the law immediately to him in the lowest grade? Or is there to be a gradation of law as well as of excellence? Is the command of the

²² Gro. Prel. 28.

first to the third to be conveyed through the medium of the second? Is the obedience of the third to be paid, through the same medium, to the first? Augment the number of grades, and you multiply the confusion of their intricate and endless consequences.

Is this a foundation sufficient for supporting the solid and durable superstructure of law? Shall this foundation, insufficient as it is, be laid in the contingency—allowed to be improbable, not asserted to be even possible—“if a man can be found, excelling in *all* virtues?”

Had it been the intention of Providence, that some men should govern the rest, without their consent, we should have seen as indisputable marks distinguishing these superiours from those placed under them, as those which distinguish men from the brutes. The remark of Rumbald, in the nonresistance time of Charles the second, evidenced propriety as well as wit. He could not conceive that the Almighty intended, that the greatest part of mankind should come into the world with saddles on their backs and bridles in their mouths, and that a few should come ready booted and spurred to ride the rest to death.²³ Still more apposite to our purpose is the saying of him, who declared that he would never subscribe the doctrine of the divine right of princes, till he beheld subjects born with bunches on their backs, like camels, and kings with combs on their heads, like cocks; from which striking marks it might indeed be collected, that the former were designed to labour and to suffer, and the latter, to strut and to crow.²⁴

These pretensions to superiority, when viewed from the proper point of sight, appear, indeed, absurd and ridiculous. But these pretensions, absurd and ridiculous as they are, when rounded and gilded by flattery, and swallowed by pride, have become, in the breasts of princes, a deadly poison to their own

²³ 1. Burgh. Pol. Dis. 3.

²⁴ Boling, Rem. 209.

virtues, and to the happiness of their unfortunate subjects. Those, who have been bred to be kings, have generally, by the prostituted views of their courtiers and instructors, been taught to esteem themselves a distinct and superiour species among men, in the same manner as men are a distinct and superiour species among animals.

Lewis the fourteenth was a strong instance of the effect of that inverted manner of teaching and thinking, which forms kings to be tyrants, without knowing or even suspecting that they are so. That oppression, under which he held his subjects, during the whole course of his long reign, proceeded chiefly from the principles and habits of his erroneous education. By this, he had been accustomed to consider his kingdom as his patrimony, and his power over his subjects as his rightful and undelegated inheritance. These sentiments were so deeply and strongly imprinted on his mind, that when one of his ministers represented to him the miserable condition to which those subjects were reduced, and, in the course of his representation, frequently used the word "l'etat," the state; the king, though he felt the truth, and approved the substance of all that was said, yet was shocked at the frequent repetition of the word "l'etat," and complained of it as an indecency offered to his person and character.

And, indeed, that kings should imagine themselves the final causes, for which men were made, and societies were formed, and governments were instituted, will cease to be a matter of wonder or surprise, when we find that lawyers, and statesmen, and philosophers have taught or favoured principles, which necessarily lead to the same conclusions.

Barbeyrac, whose commentaries enrich the performances of the most distinguished philosophers, at one time, taught and favoured principles, which necessarily led to the conclusions, so degrading and so destructive to the human race. On this subject, it will be worth while to pursue his train of thought.

In the formation of societies and civil governments, three different conventions or agreements are supposed, by Puffendorff and many other writers, to have taken place. The first convention is an engagement, by those who compose the society or state, to associate together in one body; and to regulate, with one common consent, whatever regards their preservation, their security, their improvement, and their happiness. The second convention is, to specify the form of government, that shall be established among them. The third convention is an engagement between the following parties; that is to say, the person or persons, on whom the sovereignty, or superiority, or majesty—for it is called by all these names—is conferred, on one hand; and, on the other hand, those who have conferred this sovereignty, this superiority, this majesty; and are now, by that step, as it seems, become subjects. By this third convention, the sovereign engages to consult the common security and advantage of the subjects; and the subjects engage to observe fidelity and allegiance to the sovereign. From this last convention, the state is supposed to receive its final completion and perfection.

This account of the origin of society and government will be fully considered afterwards. I introduce it now, in order to show the force and import of Barbeyrac's observation concerning it. "The first convention," says he, "is only, with regard to the second, what scaffolding is with regard to the building, for whose construction it was erected." ²⁵

And is it so? Is society nothing more than a scaffolding, by the means of which government may be erected; and which, consequently, may be prostrated, as soon as the edifice of civil government is built? If this is so, it must have required but a small portion of courtly ingenuity to persuade Lewis the fourteenth, that, in a monarchy, government was nothing but a scaffolding for the king.

For the honour of Barbeyrac, however, let not this account be

²⁵ Puff. 64I. note to b. 7, c. 2, s. 8.

concluded, till it be told, that this did not continue to be always his sentiment; that, on consideration and reflection, this sentiment was changed; and that, when it was changed, he, as every other great and good man will do on similar occasions, freely and nobly retracted it. But although it has been retracted by Barbeyrac, it has neither been retracted nor abandoned by some others.

To evince that I speak not without foundation, and to show, what will not be suspected till they are shown, the extravagant notions which have been entertained on this head, I will adduce a number of sentences and quotations, which Grotius²⁶ has collected together, in order to combat the sentiments of those, who hold that the supreme power is, always and without exception, in the people.

Historians and philosophers, poets and princes, bishops and fathers, are all summoned to oppose the dangerous doctrine.

When Tacitus says, "that, as we must bear with storms, barrenness, and inconveniences of nature, so we must bear with the luxury or avarice of princes;" Grotius tells us, "'tis admirably said." Marcus Antoninus, the philosopher, is produced as an authority, "that magistrates are to judge of private persons, princes of magistrates, but God alone of princes." King Vitigis declares, that "what regards the royal power is to be judged by the powers above; because it is derived from heaven, and is accountable to heaven alone." Ireneus, we are informed, says excellently, "by whose orders men are born, by his command kings are ordained." The same doctrine is contained in the constitutions of Clement. "You shall fear the king, knowing that he is chosen of God."

In a tragedy of Æschylus, the suppliants use this language to the king. "Sir, you are the city and the publick; you are an independent judge. Seated upon your throne as upon an altar, you alone govern all by your absolute commands."

²⁶ Grotius 68-71.

Here we have the very archetype of the idea of Lewis the fourteenth, sanctioned by the name of Grotius. If the king was the city and the publick; to mention "l'etat" in his presence, as something separate and distinct, was certainly an indecency; because it contained an implied though distant limitation of his power.

The reverend bishop of Tours addresses the king of France in this very remarkable manner: "If any of us, O king! should transgress the bounds of justice, he may be punished by you: but if you yourself should offend, who shall call you to account? When we make representations to you, if you please, you hear us: but if you will not, who shall condemn you? There is none but he, who has declared himself to be justice itself."

Let me also mention what Heineccius says, in much more recent times, in his *System of Universal Law*. "The doctrine,²⁷ which makes the people superiour to the king or prince, and places in the former the real, and in the latter only personal majesty, is a most petulant one. It is the doctrine of Hottoman, Sidney, Milton, and others. Since a people, when they unite into a republick, renounce their own will, and subject themselves to the will of another, with what front can they call themselves superiour to their sovereign?"

And yet Heineccius himself allows, that "Grotius (i. 3. 8.) is thought by not a few, to have given some handle to the doctrine of passive obedience and nonresistance."

Indeed, the lawyers of almost all the states of Europe represent kings as legislators: and we know, that, in the dictionaries of many, legislative and unlimited power are synonymous terms. To unlimited power, the correlative is passive obedience.

Even Baron de Wolfius, the late celebrated philosopher of Hall, lays down propositions concerning patrimonial kingdoms, without rejecting or contradicting a distinction, so injurious to the freedom and the rights of men.

²⁷ 2 Hein. 120, 121.

Domat, in his book on the civil law, derives the power of governours from *divine* authority. "It is always he (God) who places them in the seat of authority: it is from him alone that they derive all the power and authority that they have; and it is the ministry of his justice that is committed to them. And seeing it is God himself whom they represent, in the rank which raises them above others; he will have them to be considered as holding his place in their functions. And it is for this reason, that he himself gives the name of gods to those, to whom he communicates the right of governing and judging men." ²⁸

To diminish the force of the foregoing citations, it may be said, that, in all probability, Lewis the fourteenth—and the same may be said of other princes equally ignorant—never read the tragedies of Æschylus, nor the history of Gregory of Tours. It is highly probable that he never did: but it is equally probable, that their sentiments were known in his court, and found the way, through the channels of flattery, to the royal ear. But the writings of Grotius must have been well known in France, and probably to Lewis the fourteenth himself. This very book of the Rights of War and Peace was dedicated to his father, Lewis the thirteenth; and its author, we are told, had credit with some of the ministers of that prince.

Every plausible notion in favour of arbitrary power, appearing in a respectable dress, and introduced by an influential patron, is received with eagerness, protected with vigilance, and diffused with solicitude, by an arbitrary government. The consequence is, that, in such a government, political prejudices are last of all, if ever, overcome or eradicated.

But these doctrines, it may be replied, are not now believed, even in France. But they have been believed—they have been believed, even in France, to the slavery and misery of millions. And if, happily, they are not still believed there; unfortunately, they are still believed in other countries.

But I ask—why should they be believed at all? I ask further: if they are not, and ought not to be believed; why is their principle suffered to lie latent and lurking at the root of the science of law? Why is that principle continued a part of the very definition of law?

The pestilent seed may seem, at present, to have lost its vegetating power: but an unfriendly season and a rank soil may still revive it. It ought to be finally extirpated. It has, even within our own remembrance, done much real mischief. The position, that law is inseparably attached to superiour power, was the political weapon used, with the greatest force and the greatest skill, in favour of the despotick claims of Great Britain over the American colonies. Of this, the most striking proofs will appear hereafter. Let me, at present, adopt the sentiments expressed, on a similar subject, by Vattel. "If the base flatterers of despotick power rise up against my principles; I shall have, on my side, the friend of laws, the true citizen, and the virtuous man." ²⁹

Let us conclude our observations upon this hypothesis concerning the origin of sovereignty, by suggesting, that were it as solid as it is unsound in speculation, it would be wholly visionary and useless in practice. Where would minions and courtly flatterers find the objects, to which they could, even with courtly decency, ascribe superiour talents, superiour virtue, or a superiour nature, so as to entitle them, even on their own principles, to legislation and government?

We have now examined the inherent qualities, which have been alleged as sufficient to entitle, to the right and office of legislation, the superiour, whose interposition is considered as essential to a law. We have weighed them in the balance, and we have found them wanting.

If this superiour cannot rest a title on any inherent qualities; the qualities, which constitute his title, if any title he has, must

²⁹ Vattel Pref. 14.

be such as are derivative. If derivative; they must be derived either from a source that is human, or from a source that is divine. "Over a whole grand multitude," says the judicious³⁰ Hooker, "consisting of many families, impossible it is, that any should have complete lawful power, but by consent of men, or by immediate appointment of God." We will consider those sources separately.

How is this superiour constituted by *human* authority? How far does his superiority extend? Over whom is it exercised? Can any person or power, appointed by human authority, be superiour to those by whom he is appointed, and so form a necessary and essential part in the definition of a law?

On these questions, a profound, I will not say a suspicious silence is observed. By the Author of the Commentaries, this superiour is announced in a very questionable shape. We can neither tell who he is, nor whence he comes. "When society is once formed, government results of course"—I use the words³¹ of the Commentary—"as necessary to preserve and to keep that society in order. Unless some superiour be constituted, whose commands and decisions all the members are bound to obey, they would still remain as in a state of nature, without any judge upon earth to define their several rights, and redress their several wrongs. But as all the members of the society are naturally equal, it may be asked"—what question may be asked? The most natural question, that occurs to me, is—how is this superiour, without whom there can be no law, without whom there can be no judge upon earth—how is this superiour to be constituted? This is the question, which, on this occasion, I would expect to see proposed: this is the question, to which I would expect to hear an answer. But how suddenly is the scene shifted! Instead of the awful insignia of superiority, to which our view was just now directed, the mild emblems of confidence

³⁰ Hooker, b. 1, s. 10, p. 18.

³¹ 1 Bl. Com. 48.

make their appearance. The person announced was a dread superiour: but the person introduced is a humble trustee. For, to proceed, "it may be asked, in whose hands are the reins of government to be *intrusted?*"

I very well know how "a society once formed" constitute a trustee: but I am yet to learn, and the Commentator has not yet informed me, how this society can constitute their superiour. Locke somewhere says that "no one can confer more power on another, than he possesses himself."³²

If the information, how a superiour is appointed, be given in any other part of the valuable Commentaries; it has escaped my notice, or my memory. Indeed it has been remarked by his successour in the chair of law, that Sir William Blackstone "declines speaking of the origin of government."³³

The question recurs—how is this superiour constituted by human authority? Is he constituted by a law? If he is, that law, at least, must be made without a superiour; for by that law the superiour is constituted. If there can be no law without a superiour, then the institution of a superiour, by human authority, must be made in some other manner than by a law. In what other manner can human authority be exerted? Shall we say, that it may be exerted in a covenant or an engagement? Let us say, for we may say justly, that it may. Let us suppose the authority to be exerted, and the covenant or engagement to be made. Still the question recurs, can this authority so exerted, can this covenant or engagement so made, produce a superiour?

If he is now entitled to that appellation, he must be so by virtue of some thing, which he has received. But has he received more than was given? Could more be given than those, who gave it, possessed?

We can form clear conceptions of authority, original and derived, entire and divided into parts; but we have no clear

³² Lock. Gov. p. 2. s. 6.

³³ El. Jur. 23.

conceptions how the parts can become greater than the whole; nor how authority, that is derived, can become superiour to that authority, from which the derivation is made.

If these observations are well founded; it will be difficult—perhaps we may say, impossible—to account for the institution of a superiour by human *authority*.

Is there any other human source, from which superiority can spring? 'Tis thought there is: 'tis thought that human *submission* can effectuate a purpose, for the accomplishment of which human authority has been found to be unavailing.

And is it come to this! Must submission to an equal be the yoke, under which we must pass, before we can diffuse the mild power, or participate in the benign influence of law? If such is, indeed, our fate, let resignation be our aim: but before we resign ourselves, let us examine whether our fate be so hard.

That I may be able to convey a just and full representation of opinions, which have been entertained on this subject, I shall give an abstract of the manner, in which Puffendorff has reasoned concerning it, in his chapter on the generation of civil sovereignty.

His object is, “to examine whence that sovereignty or supreme command, which appears in every state, and which, as a kind of soul, informs, enlivens, and moves the publick body, is immediately produced.

In this inquiry, he supposes that civil authority requires natural strength and a title. “Both these requisites,” says he, “immediately flow from those pacts, by which the state is united and subsists.” With regard to the former—natural strength—he observes, “that since all the members of the state, in submitting their wills to the will of a single director, did, at the same time, thereby oblige themselves to nonresistance, or to obey him in all his desires and endeavours of applying their strength and wealth to the good of the publick; it appears that

he, who holds the sovereign rule, is possessed of sufficient force to compel the discharge of the injunctions, which he lays."

"So, likewise," adds he, "the same covenant affords a full and easy title, by which the sovereignty appears to be established, not upon violence, but in a lawful manner, upon the voluntary consent and *subjection* of the respective members."

"This, then," continues he, "is the nearest and immediate cause, from which sovereign authority, as a moral quality, doth result. For if we suppose *submission* in one party, and, in another, the *acceptance* of that submission; there accrues, presently, to the latter, a right of imposing commands on the former; which is what we term sovereignty or rule. And as, by private contract, the right of any thing which we possess, so, by *submission*, the right to dispose of our strength and our liberty of acting, may be conveyed to another."

He illustrates this immediate cause of sovereign authority, by the following instance. "If any person should voluntarily and upon covenant deliver himself to me in servitude, he thereby really confers on me the power of a master." "Against which way of arguing, to object the vulgar maxim, *quod quis non habet, non potest in alterum transferre*,³⁴ is but a piece of trifling ignorance."³⁵

Shall we, for a moment, suppose all this to be done? What is left to the people? Nothing. What are they? Slaves. What will be their portion? That of the beasts—instinct, compliance,

³⁴ Puff. b. 7, c. 3, s. 1, p. 654, 655.

³⁵ All this, it is true, has been done, in fact. This act of legal suicide has been often perpetrated; and, in the history of some periods, we find the prescribed form, by which liberty was extinguished—a form truly congenial with the transaction—a form expressed in terms the most disgraceful to the dignity of man. "Licentiam habeatis, mihi qualemcumque volueritis disciplinam ponere, vel venumdare, aut quod vobis placuerit de me facere." (6. Gibbon 361, cites Marculf. Formul.) But these periods were the periods which introduced and established the feudal law. "The majesty of the Roman law protected the liberty of the citizen against his own distress or despair." 6. Gibbon, 360.

and punishment. So true it is, that in the attempt to make one person more than man, millions must be made less.

We now see the price, at which law must be purchased ; for we see the terms, on which a superiour, of such absolute necessity to a law, is constituted, according to the hypothesis, of which I have given an account. We see the covenants which must be entered into, the consent which must be given, the submission which must be made, the subjection which must be undergone, the state, analogous to servitude, which must be supposed, before this system of superiority can be completed. Has this been always done—must this be always done, in every state, where law is known or felt?

Without examining its incongruity with reason, with freedom, and with fact ; without insisting on the incoherence of the parts, and the unsoundness of the whole, I shall, again, for a moment, take it all for granted : and, on that supposition, I shall put the question—Is even all this sufficient to constitute a superiour ? Is it in the power of the meanest to prostitute, any more than it is in the power of the greatest to delegate, what he does not possess ?³⁶ The arguments, therefore, which we used with regard to the appointment of a superiour by human authority, will equally apply to his appointment by human submission. The manner may be different : the result will be the same.

Indeed, the author of this system betrays a secret consciousness, that it is too weak and too disjointed to stand without an extrinsick support. “Yet still,” says he, “to procure to the supreme command an especial efficacy, and a sacred respect,

³⁶ Let individuals, in any number whatever, become severally and successively subject to one man, they are all, in that case, nothing more than master and slaves ; they are not a people governed by their chief ; they are an aggregate, if you will ; but they do not form an association ; there subsists among them neither commonwealth nor body politic. Such a superiour, though he should become master of half the world, would be still a private person, and his interest, separate and distinct from that of his people, would be still no more than a private interest. Rousseau's *Orig. Comp.* 17, 18.

there is need of another additional principle, besides the submission of the subjects. And therefore he who affirms sovereignty to result immediately from compact, doth not, in the least, detract from the *sacred* character of civil government; or maintain that princes bear rule, by human right *only*, and not by divine.”³⁷

It deserves remark, that, in this passage, Puffendorff assumes the divine right of princes to bear rule, as an admitted principle; and seems only solicitous to show, that the account, which he has given, of the origin of sovereignty, is not inconsistent with their sacred character.

After some further observations with regard to the source of government and the cause of sovereignty, the author acknowledges, that there is very little difference between his sentiments on the subject, and those of Bœcler. What Bœcler’s sentiments were, we learn from the account given of them by our author. “The supreme authority,”³⁸ says Bœcler, “is not to be derived from the bare act of man, but from the command of God, and from the law of nature; or from such an act of men, by which the law of nature was followed and obeyed.”

So far Puffendorff seems willing to go. He adopts a kind of compromising principle. He founds the right of the sovereign immediately upon the submission of the subjects; but, to complete the efficacy of supreme command, he calls in the aid of an additional principle, the sacred character of civil government, and the divine right of princes to bear rule. Further he was unwilling to proceed.

It has been often the fate of a compromise between two parties, that it has given entire satisfaction to neither. Such has been the fate of that adopted by Puffendorff. Some will certainly think, that he has given too much countenance to the claim, which princes have boldly made, of a divine right to rule.

³⁷ Puff. 655, b. 7, c. 3, s. 1.—2. Burl. 39.

³⁸ Puff. 655, b. 7, c. 3, s. 1.

Others have thought, that, into his composition of a sovereign, he has infused too great a proportion of human authority. They pursue the source of sovereignty further than he is willing to accompany them, and maintain, that it is the Supreme Being, who confers immediately the supreme power on princes, without the intervention or concurrence of man.

This doctrine, in some countries, and at some periods, has been carried, and is still carried, to a very extravagant height, and has been supported and propagated, and still is supported and propagated, with uncommon zeal. It has been, and still is, a favourite at courts; and has been, and still is, treated with every appearance of profound respect by courtiers, and, in too many instances, by philosophers and by statesmen, who have imitated, and still imitate courtiers in their practice of the slavish art. In the reign of James the second, "the immediate emanation of divine authority" was introduced on every occasion, and ingrafted, often with the strangest impropriety, on every subject. Even in the present century, a book has been burnt by the hangman, because its author maintained, "that God is not the immediate cause of sovereignty."³⁹

It cannot escape observation, that, in one particular, those who carry this doctrine the furthest, seem to challenge, with some success, the palm of consistency from those, who refuse to accompany them. Both entertain the same sentiments—and they are certainly overcharged ones—concerning sovereignty and superiority. Thus far they march together. But here, one division halt. The other proceed, and, looking back on those behind them, demand, why, having gone so far, they refuse to accomplish the journey. They insist, that all human causes are inadequate to the production of that superiority or sovereignty, about the august and sacred character of which they are both agreed. They say, that neither particular men, nor a multitude of men, are themselves possessed of this sovereignty or superi-

³⁹ Puff. 656, note to b. 7, c. 3, s. 3.

ority; and, that, therefore, they cannot confer it on the prince. The consequence is, that, as this superiority is admitted to exist, and as it cannot be conferred by men, it must derive its origin from a higher source.

It is in this manner that Domat reasons concerning the origin of sovereignty and government. "As there is none but God alone who is the natural sovereign of man; so it is likewise from him that they who govern derive all their power and authority. It is one of the ceremonies in the coronation of the kings of France, for them to take the sword from the altar; thereby to denote, that it is immediately from the hand of God that they derive the sovereign power, of which the sword is the principal emblem." ⁴⁰

In the same train of sentiment, Bishop Taylor ⁴¹ observes, "that the legislative or supreme power is not the servant of the people, but the minister, the trustee, and the representative of God: that all just human power is given from above, not from beneath; from God, not from the people."

Indeed, on the principle of superiority, Caligula's reasoning was concise and conclusive. "If I am only a man, my subjects are something less: if they are men, I am something more." ⁴²

The answer to the foregoing reasoning appears to me to be more ingenious than solid, and to be productive of amusement, rather than of conviction. I shall deliver it from Burlamaqui, who, on this subject, has followed the opinions of Puffendorff. "This argument," says he, "proves nothing. It is true, that neither each member of the society, nor the whole multitude collected, are formally invested with the supreme authority; but it is sufficient that they possess it virtually; that is, that they have within themselves all that is necessary to enable them, by the concurrence of their free will and consent, to produce it in the

⁴⁰ 2. Domat 298, 299.

⁴¹ Rule of Conscience, 429.

⁴² Rous. Or. Com, 6.

sovereign. Since every individual has a natural right of disposing of his own natural freedom, according as he thinks proper; why should he not have a power of transferring to another, that right which he has of directing himself? Now is it not manifest, that, if all the members of the society agree to transfer this right to one of their fellow members, this cession will be the nearest and immediate cause of sovereignty? It is, therefore, evident, that there are, in each individual, the seeds, as it were, of the supreme power. The case is here very near the same, as in that of several voices collected together, which, by their union, produce a harmony, that was not to be found separately in each.”⁴³

The metaphors from vegetation and musick may illustrate and please; but they cannot prove nor convince. The notion of virtual sovereignty is as unsatisfactory to me, on this occasion, as that of virtual representation has been, on many others. Indeed, I see but little difference between a claim to derive from another that, which he is willing to give, but of which he is not possessed, and a claim to derive from him that, which he possesses, but which he has not given, and will not give.

Besides; let me repeat the questions, which I formerly put.—Have these degrading steps been always taken? must they be always taken, in every state, where law is known or felt? For let it not be forgotten, that superiority is introduced as a *necessary* part of the definition of law.

I will not attempt to paint the hideous consequences that have been drawn, nor the still more hideous practices that have claimed impunity, indulgence, and even sanction, from the pretended principle of the divine right of princes. Absolute, unlimited, and indefeasible power, nonresistance, passive obedience, tyranny, slavery, and misery walk in its train.

On this subject—its importance cannot be overrated—let us receive instruction from a well informed and a well experienced

⁴³ 2. Burl. 41, 42.

master—from one, who, probably, in some periods of his life, had felt what he so feelingly describes—from one, who had been bred to the trade of a prince, and who had been perfectly initiated in all the mysteries of the profession—from the late Frederick of Prussia.

“If my reflections,” says he, “shall be fortunate enough to reach the ears of some princes, they will find among them certain truths, which they never would have heard from the lips of their courtiers and flatterers. Perhaps they will be struck with astonishment, to see such truths placed, by their side, on the throne. But it is time, that, at last, they should learn, that their false principles are the most empoisoned source—*la source la plus empoisonnée*—of the calamities of Europe.

“Here is the error of the greatest part of princes. They believe that God has expressly, and from a particular attention to their grandeur, their happiness, and their pride, formed their subjects for no other purpose, than to be the ministers and instruments of their unbridled passions. As the principle, from which they set out, is false; the consequences cannot be otherwise than infinitely pernicious. Hence the unregulated passion for false glory—hence the inflamed desire of conquest—hence the oppressions laid upon the people—hence the indolence and dissipation of princes—hence their ambition, their injustice, their inhumanity, their tyranny—hence, in short, all those vices, which degrade the nature of man.

“If they would disrobe themselves of these erroneous opinions; if they would ascend to the true origin of their appointment; they would see, that their elevation and rank, of which they are so jealous, are, indeed, nothing else than the work of the people; they would see, that the myriads of men, placed under their care, have not made themselves the slaves of one single man, with a view to render him more powerful and more formidable; have not submitted themselves to a fellow citizen, in order to become the sport of his fancies, and the martyrs of

his caprice; but have chosen, from among themselves, the man, whom they believed to be the most just, that he might govern them; the best, that he might supply the place of a father; the most humane, that he might compassionate and relieve their misfortunes; the most valiant, that he might defend them against their enemies; the most wise, that he might not engage them inconsiderately in ruinous and destructive wars; in one word, the man the most proper to represent the body of the state, and in whom the sovereign power might become a bulwark to justice and to the laws, and not an engine, by the force of which tyranny might be exercised, and crimes might be committed with impunity.

“This principle being once established, princes would avoid the two rocks, which, in all ages, have produced the ruin of empires, and distraction in the political world—ungoverned ambition, and a listless inattention to affairs.”⁴⁴ “They would often reflect that they are men, as well as the least of their subjects—that if they are the first judges, the first generals, the first financiers, the first ministers of society; they are so, for the purpose of fulfilling the duties, which those names import. They will reflect, that they are only the first servants of the state, bound to act with the same integrity, the same caution, and the same entire disinterestedness, as if, at every moment, they were to render an account of their administration to the citizens.”⁴⁵

I will not charge to the authors, whose opinions I have examined, all the consequences that have been drawn, practically as well as theoretically, from their principles. From their principles, however, admitted by themselves without due caution and scrutiny, those consequences have been drawn by others, and drawn too accurately and too successfully for the peace, liberty, and happiness of men.

After all, I am much inclined, for the honour of human na-

⁴⁴ K. Prus. works, v. 6, pp. 48, 50.

⁴⁵ K. Prus. works, 6, pp. 83–84.

ture, to believe, that all this doctrine concerning the divine right of kings was, at first, encouraged and cherished by many, from motives, mistaken certainly, but pardonable, and even laudable; and that it was intended not so much to introduce the tyranny of princes, as to form a barrier against the tyranny of priests.

One of them, at the head of a numerous, a formidable, and a well disciplined phalanx, claimed to be the Almighty's vicegerent upon earth; claimed the power of deposing kings, disposing crowns, releasing subjects from their allegiance and overruling the whole transactions of the christian world. Superstition and ignorance dreaded, but could not oppose, the presumptuous claim. The Pope had obtained, what Archimedes wanted, *another* world, on which he placed his ecclesiastical machinery; and it was no wonder that he moved *this* according to his will and pleasure. Princes and potentates, states and kingdoms were prostrate before him. Every thing human was obliged to bend under the incumbent pressure of divine control.

It is not improbable, that, in this disagreeable predicament, the divine right of kings was considered as the only principle, which could be opposed to the claims of the papal throne; and as the only means, which could preserve the civil, from being swallowed by the ecclesiastical powers.

This conjecture receives a degree of probability from a fact, which is mentioned in the history of France.

In a general assembly of the states of the kingdom, it was proposed to canonize this position—"that kings derive their authority immediately from God." That such a proposition was made in an assembly of the states, the most popular body known in the kingdom, will, no doubt, occasion surprise. This surprise will be increased, when it is mentioned, that the proposition was patronized by the most popular part of that assembly: it was the third estate, which wished to pass it into a law. But every thing is naturally and easily accounted for, when it is mentioned further, that the principal object, which the third estate had in

view by this measure, was to secure the sovereign authority from the detestable maxims of those, who made it depend upon the pope, by giving him a power of absolving subjects from their oath of allegiance, and authorizing those who assassinated their princes as hereticks.⁴⁶

The proposal did not pass into a law; because, among other reasons, the question was thought proper for the determination of the schools. But this much may safely be inferred, that what was thought proper by the third estate to be passed into a law, would be generally received through the kingdom, as popular and wholesome doctrine.

I confess myself pleased with indulging the conjecture I have mentioned.

When I entered upon the disquisition of the doctrine of a superiour as necessary to the very definition of law; I said, that, if I was not mistaken, this notion of superiority contained the germ of the divine right of princes to rule, and of the corresponding obligation on the people implicitly to obey. It may now be seen whether or not I have been mistaken; and, if I have not been mistaken, it appears, how important it is, carefully and patiently to examine a first principle; to trace it, with attention, to its highest origin; and to pursue it, with perseverance, to its most remote consequences. I have observed this conduct with regard to the principle in question. The result, I think, has been, that, as to human laws, the notion of a superiour is a notion unnecessary, unfounded, and dangerous; a notion inconsistent with the genuine system of human authority.

Now that the will of a superiour is discarded, as an improper principle of obligation in human laws, it is natural to ask—What principle shall be introduced in its place? In its place I introduce—the consent of those whose obedience the law requires. This I conceive to be the true origin of the obligation of human laws. This principle I shall view on all its sides; I shall

⁴⁶ Puff. 656, n.

examine it historically and legally; I shall consider it as a question of theory, and as a question of fact.

Let us ascend to the first ages of societies. Customs, for a long time, were the only laws known among them. The Lycians⁴⁷ had no written laws; they were governed entirely by customs. Among the ancient Britons also, no written laws were known: they were ruled by the traditionary—and if traditionary, probably, the customary—laws of the Druids.

Now custom is, of itself, intrinsick evidence of consent. How was a custom introduced? By voluntary adoption. How did it become general? By the instances of voluntary adoption being increased. How did it become lasting? By voluntary and satisfactory experience, which ratified and confirmed what voluntary adoption had introduced. In the introduction, in the extension, in the continuance of customary law, we find the operations of consent universally predominant.

“Customs,” in the striking and picturesque language of my Lord Bacon, “are laws written in living tables.”⁴⁸ In regulations of justice and of government, they have been more effectual than the best written laws. The Romans, in their happy periods of liberty, paid great regard to customary law. Let me mention, in one word, every thing that can enforce my sentiments: the common law of England is a customary law.

Among the earliest, among the freest, among the most improved nations of the world, we find a species of law prevailing, which carried, in its bosom, internal evidence of consent. History, therefore, bears a strong and a uniform testimony in favour of this species of law.

Let us consult the sentiments⁴⁹ as well as the history of the

⁴⁷ 1. Gog. Or. Laws, 8.

⁴⁸ 4. Ld. Bac. 5.

⁴⁹ Mens, et animus, et consilium, et sententia civitatis posita est in legibus. Ut corpora nostra sine mente; sic civitas sine lege, suis partibus, ut nervis, ac sanguine, et membris, uti non potest. Legum ministri,

ancients. I find a charge against them on this subject—"that they were not accurate enough in their expressions; because they frequently applied to laws the name of *common agreements*." ⁵⁰ This, it is acknowledged, they do almost every where in their writings. He, however, who accuses the ancient writers of inaccuracy in expression, ought himself to be consummately accurate. "Let those teach others, who themselves excel." Whether the Baron Puffendorff was entitled to be a teacher in this particular, we stay not to examine. It is of more consequence to attend to the ground of his accusation.

One reason, why he urges their expressions to be inaccurate, is, that "neither the divine positive laws, nor the laws of nature had their rise from the agreement of men." All this is, at once, admitted; but the present disquisition relates only to laws that are human. What is said with regard to them? With regard to them it is said, that "the Grecians, as in their other politick speeches, so in this too, had an eye to their own democratical governments; in which, because the laws were made upon the proposal of the magistrate, with the knowledge, and by the command, of the people, and so, as it were, in the way of bargain and stipulation; they gave them the name of covenants and agreements."

I am now unsolicitous to repel the accusation: it seems, it was conceived to arise from a reference, by the ancients, to their democratical governments. Let them be called covenants, or agreements, or bargains, or stipulations, or any thing similar to any of those, still I am satisfied; for still every thing mentioned, and every thing similar to every thing mentioned, imports consent. Here history and law combine their evidence in support of consent.

Law has been denominated "a general convention of the citi-magistratus; legum interpretes, judices: legum denique idcirco omnes servi sumus, ut liberi esse possimus. Cicero pro Cluen. c. 53.

⁵⁰ Puff. 59, b. 1, c. 6, s. 7.

zens:" such is the definition of it in the Digest: for the Roman law was not, in every age of Rome, the law of slavery. A similar mode of expression has been long used in England. Magna Charta was made "by the common assent of all the realm."⁵¹

Let us listen to the judicious and excellent Hooker: what he says always conveys instruction. "The lawful power of making laws to command whole politick societies of men, belongeth so properly unto the same entire societies, that for any prince or potentate of what kind soever upon earth, to exercise the same of himself, and not either by express commission immediately and personally received from God, or else by authority derived, at the first, from their consent, upon whose persons they impose laws, it is no better than mere tyranny. Laws they are not, therefore, which publick approbation hath not made so."⁵² "Laws human, of what kind soever, are available by consent."⁵³

My Lord Shaftesbury, who formed his taste and judgment upon ancient writers and ancient opinions, delivers it as his sentiment, "That no people in a civil state can possibly be free, when they are otherwise governed, than by such laws as they themselves have constituted, or to which they have freely given consent."⁵⁴

This subject will receive peculiar illustration and importance, when we come to consider the description and characters of municipal law. I will not anticipate here what will be introduced there with much greater propriety and force.

Of law there are different kinds. All, however, may be arranged in two different classes. 1. Divine. 2. Human laws. The descriptive epithets employed denote, that the former have God, the latter, man, for their author.

⁵¹ *Sulliv.* Pref. 18.

⁵² *Hooker* b. 1, s. 10, p. 19.

⁵³ *Id.* p. 20.

⁵⁴ 3 *Shaft.* 312.

The laws of God may be divided into the following species.

I. That law, the book of which we are neither able nor worthy to open. Of this law, the author and observer is God. He is a law to himself, as well as to all created things. This law we may name the "law eternal."

II. That law, which is made for angels and the spirits of the just made perfect. This may be called the "law celestial." This law, and the glorious state for which it is adapted, we see, at present, but darkly and as through a glass; but hereafter we shall see even as we are seen; and shall know even as we are known. From the wisdom and the goodness of the adorable Author and Preserver of the universe, we are justified in concluding, that the celestial and perfect state is governed, as all other things are, by his established laws. What those laws are, it is not yet given us to know; but on one truth we may rely with sure and certain confidence—those laws are wise and good. For another truth we have infallible authority—those laws are strictly obeyed: "In heaven his will is done."

III. That law, by which the irrational and inanimate parts of the creation are governed. The great Creator of all things has established general and fixed rules, according to which all the phenomena of the material universe are produced and regulated. These rules are usually denominated laws of nature. The science, which has those laws for its object, is distinguished by the name of natural philosophy. It is sometimes called, the philosophy of body. Of this science, there are numerous branches.

IV. That law, which God has made for man in his present state; that law, which is communicated to us by reason and conscience, the divine monitors within us, and by the sacred oracles, the divine monitors without us. This law has undergone several subdivisions, and has been known by distinct appellations, according to the different ways in which it has been promulgated, and the different objects which it respects.

As promulgated by reason and the moral sense, it has been

called natural; as promulgated by the holy scriptures, it has been called revealed law.

As addressed to men, it has been denominated the law of nature: as addressed to political societies, it has been denominated the law of nations.

But it should always be remembered, that this law, natural or revealed, made for men or for nations, flows from the same divine source: it is the law of God.

Nature, or, to speak more properly, the Author of nature, has done much for us; but it is his gracious appointment and will, that we should also do much for ourselves. What we do, indeed, must be founded on what he has done; and the deficiencies of our laws must be supplied by the perfections of his. Human law must rest its authority, ultimately, upon the authority of that law, which is divine.

Of that law, the following are maxims—that no injury should be done—that a lawful engagement, voluntarily made, should be faithfully fulfilled. We now see the deep and the solid foundations of human law.

It is of two species. 1. That which a political society makes for itself. This is municipal law. 2. That which two or more political societies make for themselves. This is the voluntary law of nations.

In all these species of law—the law eternal—the law celestial—the law natural—the divine law, as it respects men and nations—the human law, as it also respects men and nations—man is deeply and intimately concerned. Of all these species of law, therefore, the knowledge must be most important to man.

Those parts of natural philosophy, which more immediately relate to the human body, are appropriated to the profession of physick.

The law eternal, the law celestial, and the law divine, as they are disclosed by that revelation, which has brought life and im-

mortality to light, are the more peculiar objects of the profession of divinity.

The law of nature, the law of nations, and the municipal law form the objects of the profession of law.

From this short, but plain and, I hope, just statement of things, we perceive a principle of connexion between all the learned professions; but especially between the two last mentioned. Far from being rivals or enemies, religion and law are twin sisters, friends, and mutual assistants. Indeed, these two sciences run into each other. The divine law, as discovered by reason and the moral sense, forms an essential part of both.

From this statement of things, we also perceive how important and dignified the profession of the law is, when traced to its sources, and viewed in its just extent.

The immediate objects of our attention are, the law of nature, the law of nations, and the municipal law of the United States, and of the several states which compose the Union. It will not be forgotten, that the constitutions of the United States, and of the individual states, form a capital part of their municipal law. On the two first of these three great heads, I shall be very general. On the last, especially on those parts of it, which comprehend the constitutions and publick law, I shall be more particular and minute.

OF THE LAW OF NATURE

(Text from No. 16 of Bibliography)

CHAPTER III

OF THE LAW OF NATURE

In every period of our existence, in every situation, in which we can be placed, much is to be known, much is to be done, much is to be enjoyed. But all that is to be known, all that is to be done, all that is to be enjoyed, depends upon the proper exertion and direction of our numerous powers. In this immense ocean of intelligence and action, are we left without a compass and without a chart? Is there no pole star, by which we may regulate our course? Has the all-gracious and all-wise Author of our existence formed us for such great and such good ends; and has he left us without a conductor to lead us in the way, by which those ends may be attained? Has he made us capable of observing a rule, and has he furnished us with no rule, which we ought to observe? Let us examine these questions—for they are important ones—with patience and with attention. Our labours will, in all probability, be amply repaid. We shall probably find that, to direct the more important parts of our conduct, the bountiful Governour of the universe has been graciously pleased to provide us with a law; and that, to direct the less important parts of it, he has made us capable of providing a law for ourselves.

That our Creator has a supreme right to prescribe a law for our conduct, and that we are under the most perfect obligation to obey that law, are truths established on the clearest and most solid principles.

In the course of our remarks on that part of Sir William Blackstone's definition of law, which includes the idea of a

superiour as essential to it, we remarked, with particular care, that it was only with regard to human laws that we controverted the justness or propriety of that idea. It was incumbent on us to mark this distinction particularly; for with regard to laws which are divine, they truly come from a superiour—from Him who is supreme.

Between beings, who, in their nature, powers, and situation, are so perfectly equal, that nothing can be ascribed to one, which is not applicable to the other, there can be neither superiority nor dependence. With regard to such beings, no reason can be assigned, why any one should assume authority over others, which may not, with equal propriety, be assigned, why each of those others should assume authority over that one. To constitute superiority and dependence, there must be an essential difference of qualities, on which those relations may be founded.¹

Some allege, that the sole superiority of strength, or, as they express it, an irresistible power, is the true foundation of the right of prescribing laws. "This superiority of power gives," say they, "a right of reigning, by the impossibility, in which it places others, of resisting him, who has so great an advantage over them."²

Others derive the right of prescribing laws and imposing obligations from superiour excellence of nature. "This," say they, "not only renders a being independent of those, who are of a nature inferiour to it; but leads us to believe, that the latter were made for the sake of the former." For a proof of this, they appeal to the constitution of man. "Here," they tell us, "the soul governs, as being the noblest part." "On the same foundation," they add, "the empire of man over the brute creation is built."³

¹ 1. Burl. 82.

² 1. Burl. 83.

³ 1. Burl. 83.

Others, again, say, that "properly speaking, there is only one general source of superiority and obligation. God is our creator: in him we live, and move, and have our being: from him we have received our intellectual and our moral powers: he, as master of his own work, can prescribe to it whatever rules to him shall seem meet. Hence our dependence on our Creator: hence his absolute power over us. This is the true source of all authority." ⁴

With regard to the first hypothesis, it is totally insufficient; nay, it is absolutely false. Because I cannot resist, am I obliged to obey? Because another is possessed of superiour force, am I bound to acknowledge his will as the rule of my conduct? Every obligation supposes motives that influence the conscience and determine the will, so that we should think it wrong not to obey, even if resistance was in our power. But a person, who alleges only the law of the strongest, proposes no motive to influence the conscience, or to determine the will. Superiour force may reside with predominant malevolence. Has force, exerted for the purposes of malevolence, a right to command? Can it impose an obligation to obey? No. Resistance to such force is a right; and, if resistance can prove effectual, it is a duty also. On some occasions, all our efforts may, indeed, be useless; and an attempt to resist would frustrate its own aim: but, on such occasions, the exercise of resistance only is suspended; the right of resistance is not extinguished: we may continue, for a time, under a constraint; but we come not under an obligation: we may suffer all the external effects of superiour force; but we feel not the internal influence of superiour authority? ⁵

The second hypothesis has in it something plausible; but, on examination, it will not be found to be accurate. Wherever a being of superiour excellence is found, his excellence, as well as every other truth, ought, on proper occasions, to be acknowl-

⁴ Id. 83, 87.

⁵ Id. 85, 86.

edged; we will go farther; it ought, as every thing excellent ought, to be esteemed. But must we go farther still? Is obedience the necessary consequence of honest acknowledgment and just esteem? Here we must make a pause: we must make some inquiries before we go forward. In what manner is this being of superiour excellence connected with us? What are his dispositions with regard to us? By what effects, if by any, will his superiour excellence be displayed? Will it be exerted for our happiness; or, as to us, will it not be exerted at all? We acknowledge—we esteem excellence; but till these questions are answered, we feel not ourselves under an obligation to obey it.⁶ If the opinion of Epicurus concerning his divinities—that they were absolutely indifferent to the happiness and interests of men—was admitted for a moment; ⁷ the inference would unquestionably be—that they were not entitled to human obedience.

The third hypothesis contains a solemn truth, which ought to be examined with reverence and awe. It resolves the supreme right of prescribing laws for our conduct, and our indispensable duty of obeying those laws, into the omnipotence of the Divinity. This omnipotence let us humbly adore. Were we to suppose—but the supposition cannot be made—that infinite goodness could be disjoined from almighty power—but we cannot—must not proceed to the inference. No, it never can be drawn; for from almighty power infinite goodness can never be disjoined.

Let us join, in our weak conceptions, what are inseparable in their incomprehensible Archetype—infinite power—infinite wisdom—infinite goodness; and then we shall see, in its resplendent glory, the supreme right to rule: we shall feel the conscious sense of the perfect obligation to obey.

⁶ I. Burl. 86, 87.

⁷ Epicurus re tollit, oratione relinquit deos. Deinde, si maxime talis est deus, ut nulla gratia, nulla hominum caritate teneatur: valeat. Quid enim dicam, propitius sit? Cic. de Nat. Deo. l. 1, c. 44.

His infinite power enforces his laws, and carries them into full and effectual execution. His infinite wisdom knows and chooses the fittest means for accomplishing the ends which he proposes. His infinite goodness proposes such ends only as promote our felicity. By his power, he is able to remove whatever may possibly injure us, and to provide whatever is conducive to our happiness. By his wisdom, he knows our nature, our faculties, and our interests: he cannot be mistaken in the designs, which he proposes, nor in the means, which he employs to accomplish them. By his goodness, he proposes our happiness: and to that end directs the operations of his power and wisdom. Indeed, to his goodness alone we may trace the principle of his laws. Being infinitely and eternally happy in himself, his goodness alone could move him to create us, and give us the means of happiness. The same principle, that moved his creating, moves his governing power. The rule of his government we shall find to be reduced to this one paternal command—Let man pursue his own perfection and happiness.

What an enrapturing view of the moral government of the universe! Over all, goodness infinite reigns, guided by unerring wisdom, and supported by almighty power. What an instructive lesson to those who think, and are encouraged by their flatterers to think, that a portion of divine right is communicated to their rule. If this really was the case; their power ought to be subservient to their goodness, and their goodness should be employed in promoting the happiness of those, who are intrusted to their care. But princes, and the flatterers of princes, are guilty, in two respects, of the grossest error and presumption. They claim to govern by divine institution and right. The principles of their government are repugnant to the principles of that government, which is divine. The principle of the divine government is goodness: they plume themselves with the gaudy insignia of power.

Well might nature's poet say—

Could great men thunder,
 As Jove himself does, Jove would ne'er be quiet;
 For every pelting, petty officer
 Would use his heaven for thunder;
 Nothing but thunder. Merciful heaven!
 Thou rather with thy sharp and sulphurous bolt
 Split'st the unwedgeable and gnarled oak,
 Than the soft myrtle: O, but man, proud man,
 Dressed in a little brief authority,
 Most ignorant of what he's most assured,
 His glassy substance; like an angry ape,
 Plays such fantastick tricks before high heaven,
 As make the angels weep.

Shak., Meas. for Meas., Act II.

Where a supreme right to give laws exists, on one side, and a perfect obligation to obey them exists, on the other side; this relation, of itself, suggests the probability that laws will be made.

When we view the inanimate and irrational creation around and above us, and contemplate the beautiful order observed in all its motions and appearances; is not the supposition unnatural and improbable—that the rational and moral world should be abandoned to the frolicks of chance, or to the ravage of disorder? What would be the fate of man and of society, was every one at full liberty to do as he listed, without any fixed rule or principle of conduct, without a helm to steer him—a sport of the fierce gusts of passion, and the fluctuating billows of caprice?

To be without law is not agreeable to our nature; because, if we were without law, we should find many of our talents and powers hanging upon us like useless incumbrances. Why should we be illuminated by reason, were we only made to obey the impulse of irrational instinct? Why should we have the power of deliberating, and of balancing our determinations, if we were made to yield implicitly and unavoidably to the in-

fluence of the first impressions? Of what service to us would reflection be, if, after reflection, we were to be carried away irresistibly by the force of blind and impetuous appetites?

Without laws, what would be the state of society? The more ingenious and artful the twolegged animal, man, is, the more dangerous he would become to his equals: his ingenuity would degenerate into cunning; and his art would be employed for the purposes of malice. He would be deprived of all the benefits and pleasures of peaceful and social life: he would become a prey to all the distractions of licentiousness and war.

Is it probable—we repeat the question—is it probable that the Creator, infinitely wise and good, would leave his moral world in this chaos and disorder?

If we enter into ourselves, and view with attention what passes in our own breasts, we shall find, that what, at first, appeared probable, is proved, on closer examination, to be certain; we shall find, that God has not left himself without a witness, nor us without a guide.

We have already observed, that, concerning the nature and cause of obligation, many different opinions have been entertained, and much ingenious disputation has been held, by philosophers and writers on jurisprudence. It will not be improper to take a summary view of those opinions.

Some philosophers maintain, that all obligation arises from the relations of things; ⁸ from a certain proportion or disproportion, a certain fitness or unfitness, between objects and actions, which give a beauty to some, and a deformity to others. They say, that the rules of morality are founded on the nature of things; and are agreeable to the order necessary for the beauty of the universe.⁹

Others allege, that every rule whatever of human actions carries with it a moral necessity of conforming to it; and conse-

⁸ 1 Ruth. 9.

⁹ Gro. 10.

quently produces a sort of obligation. Every rule, say they, implies a design, and the will of attaining a certain end. He, therefore, who proposes a particular end, and knows the rule by which alone he can accomplish it, finds himself under a moral necessity of observing that rule. If he did not observe it, he would act a contradictory part; he would propose the end, and neglect the only means, by which he could obtain it. There is a reasonable necessity, therefore, to prefer one manner of acting before another; and every reasonable man finds himself engaged to this, and prevented from acting in a contrary manner. In other words, he is obliged: for obligation is nothing more than a restriction of liberty produced by reason. Reason, then, independent of law, is sufficient to impose *some* obligation on man, and to establish a system of morality and duty.¹⁰

But, according to others, the idea of obligation necessarily implies a being, who obliges, and must be distinct from him, who is obliged. If the person, on whom the obligation is imposed, is the same as he who imposes it; he can disengage himself from it whenever he pleases: or, rather, there is no obligation. Obligation and duty depend on the intervention of a superiour, whose will is manifested by law. If we abstract from all law, and consequently from a legislator; we shall have no such thing as right, obligation, duty, or morality.¹¹

Others, again, think it necessary to join the last two principles together, in order to render the obligation perfect.¹² Reason, say they, is the first rule of man, the first principle of morality, and the immediate cause of all primitive obligation. But man being necessarily dependent on his Creator, who has formed him with wisdom and design, and who, in creating him, has proposed some particular ends; the will of God is another rule of human actions, another principle of morality, obligation, and duty. On this

¹⁰ Hein. 63; 1 Burl. 207. 210. 212; Puff. 17, b. 1, c. 2, s. 6.

¹¹ 1 Burl. 210, 212, 202; Hein. 10.

¹² 1 Ruth. 9.

distinction, the kinds of obligation, external and internal, are founded. These two principles must be united, in order to form a complete system of morality, really founded on the nature and state of man. As a rational being, he is subject to reason: as a creature of God, to his supreme will. Thus, reason and the divine will are perfectly reconciled, are naturally connected, and are strengthened by their junction.¹³

The cause of obligation is laid, by some philosophers, in utility.¹⁴ Actions, they tell us, are to be estimated by their tendency to promote happiness. Whatever is expedient, is right. It is the utility, alone, of any moral rule, which constitutes it obligation.

Congenial with this principle, is another, which has received the sanction of some writers—that sociability, or the care of maintaining society properly, is the fountain of obligation and right: for to every right, there must be a corresponding obligation. From this principle the inference is drawn, that every one is born, not for himself alone, but for the whole human kind.¹⁵

Further—many philosophers derive our obligation to observe the law of nature from instinctive affections, or an innate moral sense.¹⁶ This is the sense, they tell us, by which we perceive the qualities of right and wrong, and the other moral qualities in actions.

With regard, then, both to the meaning and the cause of obligation, much diversity of sentiment, much ambiguity, and much obscurity have, it appears, prevailed. It is a subject of inquiry, however, that well deserves to be investigated, explained, illustrated, and placed in its native splendour and dignity. In order to do this, it will be proper to ascertain the precise state of the question before us. It is this—what is the efficient cause of moral obligation—of the eminent distinction between right and wrong?

¹³ I Burl. 214, 216, 219, 220.

¹⁴ I Paley, 82; Hein. 51.

¹⁵ Hein. 50; Gro. Prel. 17; Puff, 139, b. 2, c. 3, s. 15.

¹⁶ I Ruth. 9.

This has been often and injudiciously blended with another question, connected indeed with it, but from which it ought to be preserved separate and distinct. That other question is—how shall we, in particular instances, learn the dictates of our duty, and make, with accuracy, the eminent distinction, which we have just now mentioned? The first question points to the *principle* of obligation: the second points to the *means* by which our obligation to perform a specified action, or a series of specified actions, may be deduced. The first has been called by philosophers—*principium essendi*—the principle of existence; the principle which *constitutes* obligation. The second has been called by them—*principium cognoscendi*—the principle of knowing it; the principle by which it may be *proved* or *perceived*. In a commonwealth, the distinction between these two questions is familiar and easy. If the question is put—what is the efficient cause of the obligation upon the citizens to obey the laws of the state?—the answer is ready—the will of those, by whose authority the laws are made. If the other question is put—how shall we, in a particular instance, or in a series of particular instances, ascertain the laws, which the citizen ought to obey?—reference is immediately made to the code of laws.

Having thus stated the question—what is the efficient cause of moral obligation?—I give it this answer—the will of God. This is the supreme law.¹⁷ His just and full right of imposing laws, and our duty in obeying them, are the sources of our moral obligations. If I am asked—why do you obey the will of God? I answer—because it is my duty so to do. If I am asked again—how do you know this to be your duty? I answer again—because I am told so by my moral sense or conscience. If I am asked a third time—how do you know that you ought to do that, of which your conscience enjoins the performance? I can only say, I *feel* that such is my duty. Here investigation must stop; rea-

¹⁷ Principem legem illam et ultimam, mentem esse dicebant, omnia ratione aut cogentis, aut vetantis dei. Cic. de leg. 1, 2, c. 4.

soning can go no farther. The science of morals, as well as other sciences, is founded on truths, that cannot be discovered or proved by reasoning. Reason is confined to the investigation of unknown truths by the means of such as are known. We cannot, therefore, begin to reason, till we are furnished, otherwise than by reason, with some truths, on which we can found our arguments. Even in mathematicks, we must be provided with axioms perceived intuitively to be true, before our demonstrations can commence. Morality, like mathematicks, has its intuitive truths, without which we cannot make a single step in our reasonings upon the subject.¹⁸ Such an intuitive truth is that, with which we just now closed our investigation. If a person was not possessed of the feeling before mentioned; it would not be in the power of arguments, to give him any conception of the distinction between right and wrong. These terms would be to him equally unintelligible, as the term *colour* to one who was born and has continued blind. But that there is, in human nature, such a moral principle, has been felt and acknowledged in all ages and nations.

Now that we have stated and answered the first question; let us proceed to the consideration of the second—how shall we, in particular instances, learn the dictates of our duty, and make, with accuracy, the proper distinction between right and wrong; in other words, how shall we, in particular cases, discover the will of God? We discover it by our conscience, by our reason, and by the Holy Scriptures. The law of nature and the law of revelation are both divine: they flow, though in different channels, from the same adorable source. It is, indeed, preposterous to separate them from each other. The object of both is—to discover the will of God—and both are necessary for the accomplishment of that end.

¹⁸ Quæ est gens, aut quod genus hominum, quod non habeat sine doctrina anticipationem quandam, id est, anticeptam animo rei quandam informationem, sine qua nec intelligi quidquam, nec quæri, nec disputari potest. Cic. de Nat. Deor. l. 1, c. 16.

I. The power of moral perception is indeed, a most important part of our constitution. It is an original power—a power of its own kind; and totally distinct from the ideas of utility and agreeableness. By that power, we have conceptions of merit and demerit, of duty and moral obligation. By that power, we perceive some things in human conduct to be right, and others to be wrong. We have the same reason to rely on the dictates of this faculty, as upon the determinations of our senses, or of our other natural powers. When an action is represented to us, flowing from love, humanity, gratitude, an ultimate desire of the good of others; though it happened in a country far distant, or in an age long past, we admire the lovely exhibition, and praise its author. The contrary conduct, when represented to us, raises our abhorrence and aversion. But whence this secret chain betwixt each person and mankind? If there is no moral sense, which makes benevolence appear beautiful; if all approbation be from the interest of the approver;

“What’s Hecuba to us, or we to Hecuba?” ¹⁹

The mind, which reflects on itself, and is a spectator of other minds, sees and feels the soft and the harsh, the agreeable and the disagreeable, the foul and the fair, the harmonious and the dissonant, as really and truly in the affections and actions, as in any musical numbers, or the outward forms or representations of sensible things. It cannot withhold its approbation or aversion in what relates to the former, any more than in what relates to the latter, of those subjects. To deny the sense of a sublime and beautiful and of their contraries in actions and things, will appear an affectation merely to one who duly considers and traces the subject. Even he who indulges this affectation cannot avoid the discovery of those very sentiments, which he pretends not to feel. A Lucretius or a Hobbes cannot discard the sentiments of praise and admiration respecting some moral forms, nor the

¹⁹ Hamlet.

sentiments of censure and detestation concerning others. Has a man gratitude, or resentment, or pride, or shame? If he has and avows it; he must have and acknowledge a sense of something benevolent, of something unjust, of something worthy, and of something mean. Thus, so long as we find men pleased or angry, proud or ashamed; we may appeal to the reality of the moral sense. A right and a wrong, an honourable and a dishonourable is plainly conceived. About these there may be mistakes; but this destroys not the inference, that the things are, and are universally acknowledged—that they are of nature's impression, and by no art can be obliterated.

This sense or apprehension of right and wrong appears early, and exists in different degrees. The qualities of love, gratitude, sympathy unfold themselves, in the first stages of life, and the approbation of those qualities accompanies the first dawn of reflection. Young people, who think the least about the distant influences of actions, are, more than others, moved with moral forms. Hence that strong inclination in children to hear such stories as paint the characters and fortunes of men. Hence that joy in the prosperity of the kind and faithful, and that sorrow upon the success of the treacherous and cruel, with which we often see infant minds strongly agitated.

There is a natural beauty in figures; and is there not a beauty as natural in actions? When the eye opens upon forms, and the ear to sounds; the beautiful is seen, and harmony is heard and acknowledged. When actions are viewed and affections are discerned, the inward eye distinguishes the beautiful, the amiable, the admirable, from the despicable, the odious, and the deformed. How is it possible not to own, that as these distinctions have their foundation in nature, so this power of discerning them is natural also?

The universality of an opinion or sentiment may be evinced by the structure of languages. Languages were not invented by philosophers, to countenance or support any artificial system.

They were contrived by men in general, to express common sentiments and perceptions. The inference is satisfactory, that where all languages make a distinction, there must be a similar distinction in universal opinion or sentiment. For language is the picture of human thoughts; and, from this faithful picture, we may draw certain conclusions concerning the original. Now, a universal effect must have a universal cause. No universal cause can, with propriety, be assigned for this universal opinion, except that intuitive perception of things, which is distinguished by the name of common sense.

All languages speak of a beautiful and a deformed, a right and a wrong, an agreeable and disagreeable, a good and ill, in actions, affections, and characters. All languages, therefore, suppose a moral sense, by which those qualities are perceived and distinguished.

The whole circle of the arts of imitation proves the reality of the moral sense. They suppose, in human conduct, a sublimity, a beauty, a greatness, an excellence, independent of advantage or disadvantage, profit or loss. On him, whose heart is indelicate or hard; on him, who has no admiration of what is truly noble; on him, who has no sympathetick sense of what is melting and tender, the highest beauty of the mimick arts must make, indeed, but a very faint and transient impression. If we were void of a relish for moral excellence, how frigid and uninteresting would the finest descriptions of life and manners appear! How indifferent are the finest strains of harmony, to him who has not a musical ear!

The force of the moral sense is diffused through every part of life. The luxury of the table derives its principal charms from some mixture of moral enjoyments, from communicating pleasures, and from sentiments honourable and just as well as elegant—

“The feast of reason, and the flow of soul.”

The chief pleasures of history, and poetry, and eloquence, and musick, and sculpture, and painting are derived from the same source. Beside the pleasures they afford by imitation, they receive a stronger charm from something moral insinuated into the performances. The principal beauties of behaviour, and even of countenance, arise from the indication of affections or qualities morally estimable.

Never was there any of the human species above the condition of an idiot, to whom all actions appeared indifferent. All feel that a certain temper, certain affections, and certain actions produce a sentiment of approbation; and that a sentiment of disapprobation is produced by the contrary temper, affections, and actions.

The power is capable of culture and improvement by habit, and by frequent and extensive exercise. A high sense of moral excellence is approved above all other intellectual talents. This high sense of excellence is accompanied with a strong desire after it, and a keen relish for it. This desire and this relish are approved as the most amiable affections, and the highest virtues.

This moral sense, from its very nature, is intended to regulate and control all our other powers. It governs our passions as well as our actions. Other principles may solicit and allure; but the conscience assumes authority, it must be obeyed. Of this dignity and commanding nature we are immediately conscious, as we are of the power itself. It estimates what it enjoins, not merely as superiour in degree, but as superiour likewise in kind, to what is recommended by our other perceptive powers. Without this controlling faculty, endowed as we are with such a variety of senses and interfering desires, we should appear a fabrick destitute of order: but possessed of it, all our powers may be harmonious and consistent; they may all combine in one uniform and regular direction.

In short; if we had not the faculty of perceiving certain things in conduct to be right, and others to be wrong; and of per-

ceiving our obligation to do what is right, and not to do what is wrong ; we should not be moral and accountable beings.

If we be, as, I hope, I have shown we are, endowed with this faculty ; there must be some things, which are immediately discerned by it to be right, and others to be wrong. There must, consequently, be in morals, as in other sciences, first principles, which derive not their evidence from any antecedent principles, but which may be said to be intuitively discerned.

Moral truths may be divided into two classes ; such as are selfevident, and such as, from the selfevident ones, are deduced by reasoning. If the first be not discerned without reasoning, reasoning can never discern the last. The cases that require reasoning are few, compared with those that require none ; and a man may be very honest and virtuous, who cannot reason, and who knows not what demonstration means.

If the rules of virtue were left to be discovered by reasoning, even by demonstrative reasoning, unhappy would be the condition of the far greater part of men, who have not the means of cultivating the power of reasoning to any high degree. As virtue is the business of all men, the first principles of it are written on their hearts, in characters so legible, that no man can pretend ignorance of them, or of his obligation to practise them. Reason, even with experience, is too often overpowered by passion ; to restrain whose impetuosity, nothing less is requisite than the vigourous and commanding principle of duty.

II. The first principles of morals, into which all moral argumentation may be resolved, are discovered in a manner more analogous to the perceptions of sense than to the conclusions of reasoning. In morality, however, as well as in other sciences, reason is usefully introduced, and performs many important services. In many instances she regulates our belief ; and in many instances she regulates our conduct. She determines the proper means to any ends ; and she decides the preference of one end over another. She may exhibit an object to the mind, though

the perception which the mind has, when once the object is exhibited, may properly belong to a sense. She may be necessary to ascertain the circumstances and determine the motives to an action; though it be the moral sense that perceives the action to be either virtuous or vicious, after its motive and its circumstances have been discovered. She discerns the tendencies of the several senses, affections, and actions, and the comparative value of objects and gratifications. She judges concerning subordinate ends; but concerning ultimate ends she is not employed. These we prosecute by some immediate determination of the mind, which, in the order of action, is prior to all reasoning; for no opinion or judgment can move to action, where there is not a previous desire of some end.—This power of comparing the several enjoyments, of which our nature is susceptible, in order to discover which are most important to our happiness, is of the highest consequence and necessity to corroborate our moral faculty, and to preserve our affections in just rank and regular order.

A magistrate knows that it is his duty to promote the good of the commonwealth, which has intrusted him with authority. But whether one particular plan or another particular plan of conduct in office, may best promote the good of the commonwealth, may, in many cases, be doubtful. His conscience or moral sense determines the end, which he ought to pursue; and he has intuitive evidence that his end is good: but the means of attaining this end must be determined by reason. To select and ascertain those means, is often a matter of very considerable difficulty. Doubts may arise; opposite interests may occur; and a preference must be given to one side from a small over-balance, and from very nice views. This is particularly the case in questions with regard to justice. If every single instance of justice, like every single instance of benevolence, were pleasing and useful to society, the case would be more simple, and would be seldom liable to great controversy. But as single instances of

justice are often pernicious in their first and immediate tendency; and as the advantage to society results only from the observance of the general rule, and from the concurrence and combination of several persons in the same equitable conduct; the case here becomes more intricate and involved. The various circumstances of society, the various consequences of any practice, the various interests which may be proposed, are all, on many occasions, doubtful, and subject to much discussion and inquiry. The design of municipal law (for let us still, from every direction, open a view to our principal object) the design of municipal law is to fix all the questions which regard justice. A very accurate reason or judgment is often requisite, to give the true determination amidst intricate doubts, arising from obscure or opposite utilities.

Thus, though good and ill, right and wrong are ultimately perceived by the moral sense, yet reason assists its operations, and, in many instances, strengthens and extends its influence. We may argue concerning propriety of conduct: just reasonings on the subject will establish principles for judging of what deserves praise: but, at the same time, these reasonings must always, in the last resort, appeal to the moral sense.

Farther; reason serves to illustrate, to prove, to extend, to apply what our moral sense has already suggested to us, concerning just and unjust, proper and improper, right and wrong. A father feels that paternal tenderness is refined and confirmed, by reflecting how consonant that feeling is to the relation between a parent and his child; how conducive it is to the happiness, not only of a single family, but, in its extension, to that of all mankind. We feel the beauty and excellence of virtue; but this sense is strengthened and improved by the lessons, which reason gives us concerning the foundations, the motives, the relations, the particular and the universal advantages flowing from this virtue, which, at first sight, appeared so beautiful.

Taste is a faculty, common, in some degree, to all men. But

study, attention, comparison operate most powerfully towards its refinement. In the same manner, reason contributes to ascertain the exactness, and to discover and correct the mistakes, of the moral sense. A prejudice of education may be misapprehended for a determination of morality. 'Tis reason's province to compare and discriminate.

Reason performs an excellent service to the moral sense in another respect. It considers the relations of actions, and traces them to the remotest consequences. We often see men, with the most honest hearts and most pure intentions, embarrassed and puzzled, when a case, delicate and complicated, comes before them. They feel what is right; they are unshaken in their general principles; but they are unaccustomed to pursue them through their different ramifications, to make the necessary distinctions and exceptions, or to modify them according to the circumstances of time and place. 'Tis the business of reason to discharge this duty; and it will discharge it the better in proportion to the care which has been employed in exercising and improving it.

The existence of the moral sense has been denied by some philosophers of high fame: its authority has been attacked by others: the certainty and uniformity of its decisions have been arraigned by a third class.²⁰ We are told, that, without education, we should have been in a state of perfect indifference as to virtue and vice; that an education, opposite to that which we have received, would have taught us to regard as virtue that which we now dislike as vice, and to despise as vice that which we now esteem as virtue. In support of these observations, it is farther said, that moral sentiment is different in different countries, in different ages, and under different forms of government and religion; in a word, that it is as much the effect of custom, fashion, and artifice, as our taste in dress, furniture, and the modes of conversation. Facts and narratives have been

²⁰ I Paley, 12-24; Kaimes Pr. Eq. 8.

assembled and accumulated, to evince the great diversity and even contrariety that subsists concerning moral opinions. And it has been gravely asked, whether the wild boy, who was caught in the woods of Hanover, would feel a sentiment of disapprobation upon being told of the conduct of a parricide. An investigation of those facts and narratives cannot find a place in these lectures; though the time bestowed on it might be well employed. It may, however, be proper to observe, that it is but candid to consider human nature in her improved, and not in her most rude or depraved forms. "The good experienced man," says Aristotle, "is the last measure of all things."²¹ To ascertain moral principles, we appeal not to the common sense of savages, but of men in their most perfect state.

Epicurus, as well as some modern advocates of the same philosophy, seem to have taken their estimates of human nature from its meanest and most degrading exhibitions; but the noblest and most respectable philosophers of antiquity have chosen, for a much wiser and better purpose, to view it on the brightest and most advantageous side. "It is impossible," says the incomparable Addison,²² "to read a passage in Plato or Tully, and a thousand other ancient moralists, without being a greater and a better man for it. On the contrary, I could never read some modish modern authors, without being, for some time, out of humour with myself, and at every thing about me. Their business is to depreciate human nature, and consider it under its worst appearances. They give mean interpretation and base motives to the worthiest actions—in short, they endeavour to make no distinction between man and man, or between the species of men and that of brutes." True it is, that some men and some nations are savage and brutish; but is that a reason why their manners and their practices should be generally and reproachfully charged to the account of human nature? It may,

²¹ I. Hutch. 237, 121.

²² Tatler, No. 103.

perhaps, be somewhat to our purpose to observe, that in many of these representations, the picture, if compared with the original, will be found to be overcharged. For, in truth, between mankind, considered even in their rudest state, and the *mutum et turpe pecus*, a very wide difference will be easily discovered. In the most uninformed savages, we find the *communes notitiæ*, the common notions and practical principles of virtue, though the application of them is often extremely unnatural and absurd. These same savages have in them the seeds of the logician, the man of taste, the orator, the statesman, the man of virtue, and the saint. These seeds are planted in their minds by nature, though, for want of culture and exercise, they lie unnoticed, and are hardly perceived by themselves or by others. Besides, some nations that have been supposed stupid and barbarous by nature, have, upon fuller acquaintance with their history, been found to have been rendered barbarous and depraved by institution. When, by the power of some leading members, erroneous laws are once established, and it has become the interest of subordinate tyrants to support a corrupt system; error and iniquity become sacred. Under such a system, the multitude are fettered by the prejudices of education, and awed by the dread of power, from the free exercise of their reason. These principles will account for the many absurd and execrable tenets and practices with regard to government, morals, and religion, which have been invented and established in opposition to the unbiassed sentiments, and in derogation of the natural rights of mankind. But, after making all the exceptions and abatements, of which these facts and narratives, if admitted in their fullest extent, would justify the claim, still it cannot be denied, but is even acknowledged, that some sorts of actions command and receive the esteem of mankind more than others; and that the approbation of them is general, though not universal. It will certainly be sufficient for our purpose to observe, that the dictates of reason are neither more general, nor more uniform, nor more certain,

nor more commanding, than the dictates of the moral sense. Nay, farther ; perhaps, upon inquiry, we shall find, that those obliquities, extravagancies, and inconsistencies of conduct, that are produced as proofs of the nonexistence or inutility of the moral sense, are, in fact, chargeable to that faculty, which is meant to be substituted in its place. We shall find that men always approve upon an opinion—true or false, but still an opinion—that the actions approved have the qualities and tendencies, which are the proper objects of approbation. They suppose that such actions will promote their own interest ; or will be conducive to the publick good ; or are required by the Deity ; when, in truth, they have all the contrary properties—may be forbidden by the Deity, and may be detrimental both to publick and to private good. But when all this happens, to what cause is it to be traced ? Does it prove the nonexistence of a moral sense, or does it prove, in such instances, the weakness or perversion of reason ? The just solution is, that, in such instances, it is our reason, which presents false appearances to our moral sense.

It is with much reluctance, that the power of our instinctive or intuitive faculties is acknowledged by some philosophers. That the brutes are governed by instinct, but that man is governed by reason, is their favourite position. But fortunately for man, this position is not founded on truth. Our instincts, as well as our rational powers, are far superiour, both in number and in dignity, to those, which the brutes enjoy ; and it were well for us, on many occasions, if we laid our reasoning systems aside, and were more attentive in observing the genuine impulses of nature. In this enlarged and elevated meaning, the sentiment of Pope ²³ receives a double portion of force and sublimity.

“And reason raise o’er instinct as you can,
In this, ’tis God directs, in that, ’tis man.”

This sentiment is not dictated merely in the fervid glow of

²³ Ess. on Man. Ep. 3, v, 99.

enraptured poetry; it is affirmed by the deliberate judgment of calm, sedate philosophy. Our instincts are no other than the oracles of eternal wisdom; our conscience, in particular, is the voice of God within us: it teaches, it commands, it punishes, it rewards. The testimony of a good conscience is the purest and the noblest of human enjoyments.

It will be proper to examine a little more minutely the opinions of those, who allege reason to be the sole directress of human conduct. Reason may, indeed, instruct us in the pernicious or useful tendency of qualities and actions: but reason alone is not sufficient to produce any moral approbation or blame. Utility is only a tendency to a certain end; and if the end be totally indifferent to us, we shall feel the same indifference towards the means. It is requisite that *sentiment* should intervene, in order to give a preference to the useful above the pernicious tendencies.

Reason judges either of relations or of matters of fact. Let us consider some particular virtue or vice under both views. Let us take the instance of *ingratitude*. This has place, when good will is expressed and good offices are performed on one side, and ill will or indifference is shown on the other. The first question is—what is that matter of fact, which is here called a vice? Indifference or ill will. But ill will is not always, nor in all circumstances a crime: and indifference may, on some occasions, be the result of the most philosophick fortitude. The vice of ingratitude, then, consists not in matter of fact.

Let us next inquire into the relations, which reason can discover, among the materials, of which ingratitude is composed. She discovers good will and good offices on one side, and ill will or indifference on the other. This is the relation of *contrariety*. Does ingratitude consist in this? To which side of the contrary relation is it to be placed? For this relation of contrariety is formed as much by good will and good offices, as by ill will or indifference. And yet the former deserves praise as much as the latter deserves blame.

If it shall be said, that the morality of an action does not consist in the relation of its different parts to one another, but in the relation of the whole actions to the rule; and that actions are denominated good or ill, as they agree or disagree with that rule; another question occurs—What is this rule of right? by what is it discovered or determined? By reason, it is said. How does reason discover or determine this rule? It must be by examining facts or the relations of things. But by the analysis which has been given of the particular instance under our consideration, it has appeared that the vice of ingratitude consists neither in the matter of fact, nor in the relation of the parts, of which the fact is composed. Objects in the animal world, nay inanimate objects, may have to each other all the same relations, which we observe in moral agents; but such objects are never supposed to be susceptible of merit or demerit, of virtue or vice.

The *ultimate* ends of human actions, can never, in any case, be accounted for by reason. They recommend themselves entirely to the sentiments and affections of men, without dependence on the intellectual faculties. Why do you take exercise? Because you desire health. Why do you desire health? Because sickness is painful. Why do you hate pain? No answer is heard. Can one be given? No. This is an ultimate end, and is not referred to any farther object.

To the second question, you may, perhaps, answer, that you desire health, because it is necessary for your improvement in your profession. Why are you anxious to make this improvement? You may, perhaps, answer again, because you wish to get money by it. Why do you wish to get money? Because, among other reasons, it is the instrument of pleasure. But why do you love pleasure? Can a reason be given for loving pleasure, any more than for hating pain? They are both ultimate objects. 'Tis impossible there can be a progress *in infinitum*; and that one thing can always be a reason, why another is hated or desired.

Something must be hateful or desirable on its own account, and because of its immediate agreement or disagreement with human sentiment and affection.

Virtue and vice are ends ; and are hateful or desirable on their own account. It is requisite, therefore, that there should be some sentiment, which they touch—some internal taste or sense, which distinguishes moral good and evil, and which embraces one, and rejects the other. Thus are the offices of reason and of the moral sense at last ascertained. The former conveys the knowledge of truth and falsehood : the latter, the sentiment of beauty and deformity, of vice and virtue. The standard of one, founded on the nature of things, is eternal and inflexible. The standard of the other is ultimately derived from that supreme will, which bestowed on us our peculiar nature, and arranged the several classes and orders of existence. In this manner, we return to the great principle, from which we set out. It is necessary that reason should be fortified by the moral sense : without the moral sense, a man may be prudent, but he cannot be virtuous.

Philosophers have degraded our senses below their real importance. They represent them as powers, by which we have sensations and ideas only. But this is not the whole of their office ; they judge as well as inform. Not confined to the mere office of conveying impressions, they are exalted to the function of judging of the nature and evidence of the impressions they convey. If this be admitted, our moral faculty may, without impropriety, be called the *moral sense*. Its testimony, like that of the external senses, is the immediate testimony of nature, and on it we have the same reason to rely. In its dignity, it is, without doubt, far superiour to every other power of the mind.

The moral sense, like all our other powers, comes to maturity by insensible degrees. It is peculiar to human nature. It is both intellectual and active. It is evidently intended, by nature, to be the immediate guide and director of our conduct, after we arrive at the years of understanding.

III. Reason and conscience can do much; but still they stand in need of support and assistance. They are useful and excellent monitors; but, at some times, their admonitions are not sufficiently clear; at other times, they are not sufficiently powerful; at all times, their influence is not sufficiently extensive. Great and sublime truths, indeed, would appear to a few; but the world, at large, would be dark and ignorant. The mass of mankind would resemble a chaos, in which a few sparks, that would diffuse a glimmering light, would serve only to show, in a more striking manner, the thick darkness with which they are surrounded. Their weakness is strengthened, their darkness is illuminated, their influence is enlarged by that heaven-descended science, which has brought life and immortality to light. In compassion to the imperfection of our internal powers, our all-gracious Creator, Preserver, and Ruler has been pleased to discover and enforce his laws, by a revelation given to us immediately and directly from himself. This revelation is contained in the holy scriptures. The moral precepts delivered in the sacred oracles form a part of the law of nature, are of the same origin, and of the same obligation, operating universally and perpetually.

On some important subjects, those in particular, which relate to the Deity, to Providence, and to a future state, our natural knowledge is greatly improved, refined, and exalted by that which is revealed. On these subjects, one who has had the advantage of a common education in a christian country, knows more, and with more certainty, than was known by the wisest of the ancient philosophers.

One superiour advantage the precepts delivered in the sacred oracles clearly possess. They are, of all, the most explicit and the most certain. A publick minister, judging from what he knows of the interests, views, and designs of the state, which he represents, may take his resolutions and measures, in many cases,

with confidence and safety ; and may presume, with great probability, how the state itself would act. But if, besides this general knowledge, and these presumptions highly probable, he was furnished also with particular instructions for the regulation of his conduct ; would he not naturally observe and govern himself by both rules ? In cases, where his instructions are clear and positive, there would be an end of all farther deliberation. In other cases, where his instructions are silent, he would supply them by his general knowledge, and by the information, which he could collect from other quarters, concerning the counsels and systems of the commonwealth. Thus it is with regard to reason, conscience, and the holy scriptures. Where the latter give instructions, those instructions are supereminently authentic. But whoever expects to find, in them, particular directions for every moral doubt which arises, expects more than he will find. They generally presuppose a knowledge of the principles of morality ; and are employed not so much in teaching new rules on this subject, as in enforcing the practice of those already known, by a greater certainty, and by new sanctions. They present the warmest recommendations and the strongest inducements in favour of virtue : they exhibit the most powerful dissuasives from vice. But the origin, the nature, and the extent of the several rights and duties they do not explain ; nor do they specify in what instances one right or duty is entitled to preference over another. They are addressed to rational and moral agents, capable of previously knowing the rights of men, and the tendencies of actions ; of approving what is good, and of disapproving what is evil.

These considerations show, that the scriptures support, confirm, and corroborate, but do not supercede the operations of reason and the moral sense. The information with regard to our duties and obligations, drawn from these different sources, ought not to run in unconnected and diminished channels : it

should flow in one united stream, which, by its combined force and just direction, will impel us uniformly and effectually towards our greatest good.

We have traced, with some minuteness, the efficient principle of obligation, and the several means, by which our duty may be known. It will be proper to turn our attention back to the opinions that have been held, in philosophy and jurisprudence, concerning this subject. On a review of them, we shall now find that, in general, they are defective rather than erroneous; that they have fallen short of the mark, rather than deviated from the proper course.

The fitness of things denotes their fitness to produce our happiness: their nature means that actual constitution of the world, by which some things produce happiness, and others misery. Reason is one of the means, by which we discern between those things, which produce the former, and those things, which produce the latter. The moral sense feels and operates to promote the same essential discriminations. Whatever promotes the greatest happiness of the whole, is congenial to the principles of utility and sociability: and whatever unites in it all the foregoing properties, must be agreeable to the will of God: for, as has been said once, and as ought to be said again, his will is graciously comprised in this one paternal precept—Let man pursue his happiness and perfection.

The law of nature is immutable; not by the effect of an arbitrary disposition, but because it has its foundation in the nature, constitution, and mutual relations of men and things. While these continue to be the same, it must continue to be the same also. This immutability of nature's laws has nothing in it repugnant to the supreme power of an all-perfect Being. Since he himself is the author of our constitution; he cannot but command or forbid such things as are necessarily agreeable or disagreeable to this very constitution. He is under the glorious

necessity of not contradicting himself. This necessity, far from limiting or diminishing his perfections, adds to their external character, and points out their excellency.

The law of nature is universal. For it is true, not only that all men are equally subject to the command of their Maker; but it is true also, that the law of nature, having its foundation in the constitution and state of man, has an essential fitness for all mankind, and binds them without distinction.

This law, or right reason, as Cicero ²⁴ calls it, is thus beautifully described by that eloquent philosopher. "It is, indeed," says he, "a true law, conformable to nature, diffused among all men, unchangeable, eternal. By its commands, it calls men to their duty: by its prohibitions, it deters them from vice. To diminish, to alter, much more to abolish this law, is a vain attempt. Neither by the senate, nor by the people, can its powerful obligation be dissolved. It requires no interpreter or commentator. It is not one law at Rome, another at Athens; one law now, another hereafter: it is the same eternal and immutable law, given at all times and to all nations: for God, who is its author and promulgator, is always the sole master and sovereign of mankind."

"Man never *is*," says the poet, in a seeming tone of complaint, "but always *to be* blest." The sentiment would certainly be more consolatory, and, I think, it would be likewise more just, if we were to say—man ever *is*; *for* always to be blest. That we should have more and better things before us, than all that we have yet acquired or enjoyed, is unquestionably a most desirable state. The reflection on this circumstance, far from diminishing our sense or the importance of our present attainments and advantages, produces the contrary effects. The present is gilded by the prospect of the future.

When Alexander had conquered a world, and had nothing left to conquer; what did he do? He sat down and wept. A well

²⁴ De Rep. 1, 3.

directed ambition that has conquered worlds, is exempted from the fate of that of Alexander the Great: it still sees before it more and better worlds as the objects of conquest.

It is the glorious destiny of man to be always progressive. Forgetting those things that are behind, it is his duty, and it is his happiness, to press on towards those that are before. In the order of Providence, as has been observed on another occasion, the progress of societies towards perfection resembles that of an individual. This progress has hitherto been but slow: by many unpropitious events, it has often been interrupted: but may we not indulge the pleasing expectation, that, in future, it will be accelerated; and will meet with fewer and less considerable interruptions.

Many circumstances seem—at least to a mind anxious to see it, and apt to believe what it is anxious to see—many circumstances seem to indicate the opening of such a glorious prospect. The principles and the practice of liberty are gaining ground, in more than one section of the world. Where liberty prevails, the arts and sciences lift up their heads and flourish. Where the arts and sciences flourish, political and moral improvements will likewise be made. All will receive from each, and each will receive from all, mutual support and assistance: mutually supported and assisted, all may be carried to a degree of perfection hitherto unknown; perhaps, hitherto not believed.

“Men,” says the sagacious Hooker, “if we view them in their spring, are, at the first, without understanding or knowledge at all. Nevertheless, from this utter vacuity, they grow by degrees, till they become at length to be even as the angels themselves are. That which agreeth to the one now, the other shall attain to in the end: they are not so far disjoined and severed, but that they come at length to meet.”²⁵

Our progress in virtue should certainly bear a just proportion to our progress in knowledge. Morals are undoubtedly capable

²⁵ Hooker, b. 1, s. 6, p. 8.

of being carried to a much higher degree of excellence than the sciences, excellent as they are. Hence we may infer, that the law of nature, though immutable in its principles, will be progressive in its operations and effects. Indeed, the same immutable principles will direct this progression. In every period of his existence, the law, which the divine wisdom has approved for man, will not only be fitted, to the cotemporary degree, but will be calculated to produce, in future, a still higher degree of perfection.

A delineation of the laws of nature, has been often attempted. Books, under the appellations of institutes and systems of that law, have been often published. From what has been said concerning it, the most finished performances executed by human hands cannot be perfect. But most of them have been rude and imperfect to a very unnecessary, some, to a shameful degree.

A more perfect work than has yet appeared upon this great subject, would be a most valuable present to mankind. Even the most general outlines of it cannot, at least in these lectures, be expected from me.

OF THE LAW OF NATIONS

(Text from No. 16 of Bibliography)

CHAPTER IV

OF THE LAW OF NATIONS

The law of nature, when applied to states or political societies, receives a new name, that of the law of nations. This law, important in all states, is of peculiar importance in free ones. The States of America are certainly entitled to this dignified appellation. A weighty part of the publick business is transacted by the citizens at large. They appoint the legislature, and, either mediately or immediately, the executive servants of the publick. As the conduct of a state, both with regard to itself and others, must greatly depend upon the character, the talents, and the principles of those, to whom the direction of that conduct is intrusted; it is highly necessary that those who are to protect the rights, and to perform the duties of the commonwealth, should be men of proper principles, talents, and characters: if so, it is highly necessary that those who appoint them should be able, in some degree at least, to distinguish and select those men, whose principles, talents, and characters are proper. In order to do this, it is greatly useful that they have, at least, some just and general knowledge of those rights that are to be protected, and of those duties that are to be performed. Without this, they will be unable to form a rational conjecture, concerning the future conduct of those whom they are to elect. Nay, what is more; without some such general and just knowledge, they will be unable to form a rational judgment, concerning the past and present conduct of those whom they have already elected; and, consequently, will be unable to form a rational determination whether, at the next election, they should reappoint them, or sub-

stitute others in their place. As the practice of the law of nations, therefore, must, in a free government, depend very considerably on the acts of the citizens, it is of high import that, among those citizens, its knowledge be generally diffused.

But, if the knowledge of the law of nations is greatly useful to those who appoint, it must surely be highly necessary to those who are appointed, the publick servants and stewards of the commonwealth. Can its interests be properly managed, can its character be properly supported, can its happiness be properly consulted, by those who know not what it owes to others, what it owes to itself, what it has a right to claim from others, and what it has a right to provide for itself? In a free commonwealth, the path to publick service and to publick honour is open to all. Should not all, therefore, sedulously endeavour to become masters of such qualifications, as will enable them to tread this path with credit to themselves, and with advantage to their country?

In the United States, a system of republicks, the law of nations acquires an importance still more peculiar and distinguished. In the United States, the law of nations operates upon peculiar relations, and upon those relations with peculiar energy. Well am I justified, on every account, in announcing the dignity and greatness of the subject, upon which I am now to enter.

On all occasions, let us beware of being misled by names. Though the law, which I am now to consider, receives a new appellation; it retains, unimpaired, its qualities and its power. The law of nations, as well as the law of nature, is of obligation indispensable: the law of nations, as well as the law of nature, is of origin divine.

The opinions of many concerning the law of nations have been very vague and unsatisfactory; and if such have been the opinions, we have little reason to be surprised, that the conduct of nations has too often been diametrically opposite to the law, by which it ought to have been regulated. In the judgment of some writers, it would seem, for instance, that neither the state which

commences an unjust war, nor the chief who conducts it, derogates from the general sanctity of their respective characters. An ardent love of their country they seem to have thought a passion too heroick, to be restrained within the narrow limits of systematick morality; and those have been too often considered as the greatest patriots, who have contributed most to gratify the publick passion for conquest and power. States, as well as monarchs, have too frequently been blinded by ambition. Of this there is scarcely a page in ancient or in modern history, relating to national contentions, but will furnish the most glaring proofs. The melancholy truth is, that the law of nations, though founded on the most solid principles of natural obligation, has been but imperfectly viewed in theory, and has been too much disregarded in practice.

The profound and penetrating Bacon was not inattentive to the imperfect state, in which he found the science of the law of nations. As, in another science, that enlightened philosophical guide pointed to the discoveries of a Newton; so in this, in all probability, he laid a foundation for the researches of a Grotius. For we have reason to believe, as we are told by Barbeyrac,¹ that it was the study of the works of Lord Bacon, that first inspired Grotius with the design of writing a system concerning the law of nations. In this science Grotius did much; for he was well qualified to do much. Extensive knowledge, prodigious reading, indefatigable application to study, all these were certainly his. Yet with all these he was far from being as successful in law, as Sir Isaac Newton was in philosophy. He was unfortunate in not setting out on right and solid principles. His celebrated book of the Rights of War and Peace is indeed useful; but it ought not to be read without a due degree of caution: nor ought all his doctrines to be received, without the necessary grains of allowance. At this we ought not to wonder, when we consider the extent, the variety, and the importance of his subject, and

¹ Pref. to Puff. s. 29, p. 79.

that, before his time, it was little known, and much neglected. His opinion concerning the source and the obligation of the law of nations is very defective. He separates that law from the law of nature, and assigns to it a different origin. "When many men," says he, "at different times and places, unanimously affirm the same thing for truth; this should be ascribed to a general cause. In the subjects treated of by us, this cause can be no other than either a just inference drawn from the principles of nature, or a universal consent. The first discovers to us the law of nature, the second the law of nations."² The law of nations, we see, he traces from the principle of universal consent. The consequence of this is, that the law of nations would be obligatory only upon those by whom the consent was given, and only by reason of that consent. The farther consequence would be, that the law of nations would lose a part, and the greatest part, of its obligatory force, and would also be restrained as to the sphere of its operations. That it would lose the greatest part of its obligatory force, sufficiently appears from what we have said at large concerning the origin and obligation of natural law, evincing it to be the will of God. That it would be restrained as to the sphere of its operations, appears from what Grotius himself says, when he explains his meaning in another place. He qualifies the universality of his expression by adding these words, "at least the most civilized nations;" and he afterwards says that this addition is made "with reason."³ On the *least* civilized nations, therefore, the law of nations would not, according to his account of it, be obligatory.

I admit that there are laws of nations—perhaps it is to be wished that they were designated by an appropriate name; for names, after all, will have their influence on operations—I freely admit that there are laws of nations, which are founded altogether upon consent. National treaties are laws of nations, obli-

² Gro. Prel. s. 41.

³ Gro. 14.

gatory solely by consent. The customs of nations become laws solely by consent. Both kinds are certainly voluntary. But the municipal laws of a state are not more different from the law of nature, than those voluntary laws of nations are, in their source and power, different from the law of nations, properly so called. Indeed, those voluntary laws of nations are as much under the control of the law of nations, properly so called, as municipal laws are under the control of the law of nature. The law of nations, properly so called, is the law of nature applied to states and sovereigns. The law of nations, properly so called, is the law of states and sovereigns, obligatory upon them in the same manner, and for the same reasons, as the law of nature is obligatory upon individuals. Universal, indispensable, and unchangeable is the obligation of both.

But it will naturally be asked, if the law of nations bears, as from this account it bears, the same relation to states, which the law of nature bears to individuals; if the law of nature and the law of nations are accompanied with the same obligatory power, and are derived from the same common source; why should the law of nations have a distinct name? Why should it be considered as a separate science? Some have thought that the difference was only in name; and if only in name, there could surely be no solid reason for establishing even that difference. Of those, who thought so, Puffendorff was one. "Many," says he,⁴ "assert the law of nature and of nations to be the very same thing, differing no otherwise than in external denomination. Thus Mr. Hobbes divides natural law, into the natural law of men, and the natural law of states, commonly called the law of nations. He observes, that the precepts of both are the same; but that as states, when once instituted, assume the personal properties of men, what we call the law of nature, when we speak of particular men, we denominate the law of nations, when we apply it to whole states, nations, or people. This opinion," con-

⁴ Puff. p. 149, b. 2, c. 3, s. 23.

tinues Puffendorff, "we, for our part, readily subscribe to ; nor do we conceive, that there is any other voluntary or positive law of nations, properly vested with a true and legal force, and obliging as the ordinance of a superiour power." By the way, we may here observe, that, with regard to the law of nations, Grotius and Puffendorff seem to have run into contrary extremes. The former was of opinion, that the whole law of nations took its origin and authority from consent. The latter was of opinion, that every part of the law of nations was the same with the law of nature, that no part of it could receive its obligatory force from consent ; because, according to his favourite notion of law, no such thing could exist without the intervention of a superiour power. The truth seems to lie between the two great philosophers. The law of nations, properly so called, or, as it may be termed, the natural law of nations, is a part, and an important part, of the law of nature. The voluntary law of nations falls under the class of laws that are positive. If a particular name had been appropriated to this last species of law, it is probable that much confusion and ambiguity, on this subject, would have been avoided ; and the distinction between the different parts of that law, comprehended, at present, under the name of the law of nations, would have been as clearly marked, as uniformly preserved, and as familiarly taken, as the well known and well founded distinction between natural and municipal law. But to return.

As Puffendorff thought that the law of nature and the law of nations were precisely the same, he has not, in his book on these subjects, treated of the law of nations separately ; but has every where joined it with the law of nature, properly so called. His example has been followed by the greatest part of succeeding writers. But the imitation of it has produced a confusion of two objects, which ought to have been viewed and studied distinctly and apart. Though the law of nations, properly so called, be a part of the law of nature ; though it spring from the same

source; and though it is attended with the same obligatory power; yet it must be remembered that its application is made to very different objects. The law of nature is applied to individuals: the law of nations is applied to states. The important difference between the objects, will occasion a proportioned difference in the application of the law.⁵ This difference in the application renders it fit that the law of nature, when applied to states, should receive an appropriate name, and should be taught and studied as a separate science.

Though states or nations are considered as moral persons; yet the nature and essence of these moral persons differ necessarily, in many respects, from the nature and essence of the individuals, of whom they are composed. The application of a law must be made in a manner suitable to its object. The application, therefore, of the law of nature to nations must be made in a manner suitable to nations: its application to individuals must be made in a manner suitable to individuals. But as nations differ from individuals; the application of the law suitable to the former, must be different from its application suitable to the latter. To nations this different application cannot be made with accuracy, with justness, and with perspicuity, without the aid of new and discriminating rules. These rules will evince, that, on the principles themselves of the law of nature, that law, when applied to nations, will prescribe decisions different from those which it would prescribe, when applied to individuals. To investigate those rules; to deduce, from the same great and leading principles, applications differing in proportion to the difference of the persons to which they are applied, is the object of the law of nations, considered as a science distinct and separate from that of the law of nature.

Having given you this general idea and description of the law of nations; need I expatiate on its dignity and importance? The law of nations is the law of sovereigns. In free states, such as

⁵ Vat. Pref. 1.

ours, the sovereign or supreme power resides in the people. In free states, therefore, such as ours, the law of nations is the law of the people. Let us again beware of being misled by an ambiguity, sometimes, such is the structure of language, unavoidable. When I say that, in free states, the law of nations is the law of the people; I mean not that it is a law made by the people, or by virtue of their delegated authority; as, in free states, all municipal laws are. But when I say that, in free states, the law of nations is the law of the people; I mean that, as the law of nature, in other words, as the will of nature's God, it is indispensably binding upon the people, in whom the sovereign power resides; and who are, consequently, under the most sacred obligations to exercise that power, or to delegate it to such as will exercise it, in a manner agreeable to those rules and maxims, which the law of nature prescribes to every state, for the happiness of each, and for the happiness of all. How vast—how important—how interesting are these truths! They announce to a free people how exalted their rights; but, at the same time, they announce to a free people how solemn their duties are. If a practical knowledge and a just sense of these rights and these duties were diffused among the citizens, and properly impressed upon their hearts and minds; how great, how beneficial, how lasting would be their fruits! But, unfortunately, as there have been and there are, in arbitrary governments, flatterers of princes; so there have been and there are, in free governments, flatterers of the people. One distinction, indeed, is to be taken between them. The latter herd of flatterers persuade the people to make an improper use of the power, which of right they have: the former herd persuade princes to make an improper use of power, which of right they have not. In other respects, both herds are equally pernicious. Both flatter to promote their private interests: both betray the interests of those whom they flatter.

It is of the highest, and, in free states, it is of the most general

importance, that the sacred obligation of the law of nations should be accurately known and deeply felt. Of all subjects, it is agreeable and useful to form just and adequate conceptions; but of those especially, which have an influence on the practice and morality of states. For it is a serious truth, however much it has been unattended to in practice, that the laws of morality are equally strict with regard to societies, as to the individuals of whom the societies are composed. It must be owing either to ignorance, or to a very unjustifiable disregard to this great truth, that some transactions of publick bodies have often escaped censure, nay, sometimes have received applause, though those transactions have been such, as none of the individuals composing those bodies would have dared to introduce into the management of his private affairs; because the person introducing them would have been branded with the most reproachful of names and characters. It has been long admitted, by those who have been the best judges of private life and manners, that integrity and sound policy go hand in hand. It is high time that this maxim should find an establishment in the councils of states, and in the cabinets of princes. Its establishment there would diffuse far and wide the most salutary and benign effects.

Opinions concerning the extent of the law of nations have not been less defective and inadequate, than those concerning its origin and obligatory force. Some seem to have thought, that this law respects and regulates the conduct of nations only in their intercourse with each other. A very important branch of this law—that containing the duties which a nation owes itself—seems to have escaped their attention. “The general principle,” says Burlamaqui,⁶ “of the law of nations, is nothing more than the general law of sociability, which obliges nations to the same duties as are prescribed to individuals. Thus the law of natural equality, which prohibits injury and commands the reparation of damage done; the law of beneficence, and of fidel-

⁶ 2 Burl. 3, 4. 1 Burl. 196.

ity to our engagements, are laws respecting nations, and imposing, both on the people and on their respective sovereigns, the same duties as are prescribed to individuals." Several other writers concerning the law of nations appear to have formed the same imperfect conceptions with regard to its extent. Let us recur to what the law of nature dictates to an individual. Are there not duties which he owes to himself? Is he not obliged to consult and promote his preservation, his freedom, his reputation, his improvement, his perfection, his happiness? Now that we have seen the law of nature as it respects the duties of individuals, let us see the law of nations as it respects the duties of states, to themselves: for we must recollect that the law of nations is only the law of nature judiciously applied to the conduct of states. From the duties of states, as well as of individuals, to themselves, a number of corresponding rights will be found to arise.

A state ought to attend to the preservation of its own existence. In what does the existence of a state consist? It consists in the association of the individuals, of which it is composed. In what consists the preservation of this existence? It consists in the duration of that association. When this association is dissolved, the state ceases to exist; though all the members, of whom it was composed, may still remain. It is the duty of a state, therefore, to preserve this association undissolved and unimpaired. But in this, as in many other instances, a difference between the nature of states and the nature of individuals will occasion, for the reasons already mentioned, a proportioned difference in the application of the law of nature. Nations, as well as men, are taught by the law of nature, gracious in its precepts, to consider their happiness as the great end of their existence. But without existence there can be no happiness: the means, therefore, must be secured, in order to secure the end. But yet, between the duty of self-preservation required from a state, and the duty of self-preservation required from a man,

there is a most material difference ; and this difference is founded on the law of nature itself. A nation has a right to assign to its existence a voluntary termination : a man has not. What can be the reasons of this difference ? Several may be given. By the voluntary act of the individuals forming the nation, the nation was called into existence : they who bind, can also untie : by the voluntary act, therefore, of the individuals forming the nation, the nation may be reduced to its original nothing. But it was not by his own voluntary act that the man made his appearance upon the theatre of life ; he cannot, therefore, plead the right of the nation, by his own voluntary act to make his exit. He did not make ; therefore, he has no right to destroy himself. He alone, whose gift this state of existence is, has the right to say when and how it shall receive its termination.

Again ; though nations are considered as moral persons, and, in that character, as entitled, in many respects, to claim the rights, and as obliged, in many respects, to perform the duties of natural persons ; yet we must always remember that of natural persons those moral persons are composed ; that for the sake of natural persons those moral persons were formed ; and that while we suppose those moral persons to live, and think, and act, we know that they are natural persons alone, who really exist or feel, who really deliberate, resolve, and execute. Now none of these observations resulting from the nature and essence of the nation, can be applied, with any degree of propriety, to the nature and essence of the man : and, therefore, the inferences drawn from these observations, with regard to the case of the nation, are wholly inapplicable to the case of the man.

One of these inferences is, that as it was for the happiness of the members that the moral existence of the nation was produced ; so the happiness of the members may require this moral existence to be annihilated. Can this inference be applied to the man ?

Further ; there may be a moral certainty, that, of the volun-

tary dissolution of the nation, the necessary consequence will be an increase of happiness. Can such a consequence be predicted, with moral certainty, concerning the voluntary death of the man?

This instance shows, in a striking manner, how, on some occasions, the law of nature, when applied to a nation, may dictate or authorize a measure of conduct very different from that, which it would authorize and dictate with regard to a man.

As it is, in general, the duty of a state to preserve itself ; so it is, in general, its duty to preserve its members. This is a duty which it owes to them, and to itself. It owes it to them, because their advantage was the final cause of their joining in the association, and engaging to support it ; and they ought not to be deprived of this advantage, while they fulfil the conditions, on which it was stipulated. This duty the nation owes to itself, because the loss of its members is a proportionable loss of its strength ; and the loss of its strength is proportionably injurious both to its security, and to its preservation. The result of these principles is, that the body of a nation should not abandon a country, a city, or even an individual, who has not forfeited his rights in the society.

The right and duty of a state to preserve its members are subject to the same limitations and conditions, as its right and duty to preserve itself. As, for some reasons, the society may be dissolved ; so, for others, it may be dismembered. A part may be separated from the other parts ; and that part may either become a new state, or may associate with another state already formed. An illustration of this doctrine may be drawn from a recent instance, which has happened in the commonwealth of Virginia. The district of Kentucky has, by an amicable agreement, been disjoined from the rest of the commonwealth, and has been formed into a separate state. It is a pleasure, perhaps I may add it is a laudable pride, to be able to furnish, to the world,

the first examples of carrying into practice the most sublime parts of the most sublime theories of government and law.

When a nation has a right, and is under an obligation to preserve itself and its members; it has, by a necessary consequence, a right to do every thing, which, without injuring others, it can do, in order to accomplish and secure those objects. The law of nature prescribes not impossibilities: it imposes not an obligation, without giving a right to the necessary means of fulfilling it. The same principles, which evince the right of a nation to do every thing, which it lawfully may, for the preservation of itself and of its members, evince its right, also, to avoid and prevent, as much as it lawfully may, every thing which would load it with injuries, or threaten it with danger.

It is the right, and generally it is the duty, of a state, to form a constitution, to institute civil government, and to establish laws. If the constitution formed, or the government instituted, or the laws established shall, on experience, be found weak, or inconvenient, or pernicious; it is the right, and it is the duty of the state to strengthen, or alter, or abolish them. These subjects will be fully treated in another place.

A nation ought to know itself. It ought to form a just estimate of its own situation, both with regard to itself and to its neighbours. It ought to learn the excellencies, and the blemishes likewise of its own constitution. It ought to review the instances in which it has already attained, and it ought to ascertain those in which it falls short of, a practicable degree of perfection. It ought to find out what improvements are peculiarly necessary to be promoted, and what faults it is peculiarly necessary to avoid. Without a discriminating sagacity of this kind, the principle of imitation, intended for the wisest purposes in states as well as in individuals, would be always an uncertain, sometimes a dangerous guide. A measure extremely salutary to one state, might be extremely injurious to another. What, in one

situation, would be productive of peace and happiness, might, in another, be the unfortunate cause of infelicity and war. Above all things, the genius and manners of the people ought to be carefully consulted. The government ought to be administered agreeably to this genius and these manners; but how can this be done, if this genius and these manners are unknown? This duty of self-knowledge is of vast extent and of vast importance, in nations as well as in men.

To love and to deserve honest fame, is another duty of a people, as well as of an individual. The reputation of a state is not only a pleasant, it is also a valuable possession. It attracts the esteem, it represses the unfriendly inclinations of its neighbours. This reputation is acquired by virtue, and by the conduct which virtue inspires. It is founded on the publick transactions of the state, and on the private behaviour of its members.

A state should avoid ostentation, but it should support its dignity. This should never be suffered to be degraded among other nations. In transactions between states, an attention to this object is of much greater importance than is generally imagined. Even the marks and titles of respect, to which a nation, and those who represent a nation, are entitled, ought not to be considered as trivial: they should be claimed with firmness: they should be given with alacrity. The dignity, the equality, the mutual independence, and the frequent intercourse of nations render such a tenour of conduct altogether indispensable.

It is the duty of a nation to intrust the management of its affairs only to its wisest and best citizens. The immense importance of this duty is easily seen; but it is not sufficiently regarded. The meanest menial of a family will not be received without examination and cautious inquiry. The most important servants of the publick will be voted in without consideration and without care. In electioneering, as it is called, we frequently find warm recommendations and active intrigues in favour of candidates for the highest offices, to whom the recommenders

and intriguers would not, if put to the test, intrust the management of the smallest part of their own private interest. An election ground, the great theatre of original sovereignty, on which nothing but inviolable integrity and independent virtue should be exhibited, is often and lamentably transformed into a scene of the vilest and lowest debauchery and deception. An election manœuvre, an election story, are names appropriated to a conduct, which, in other and inferiour transactions, would be branded, and justly branded, with the most opprobrious appellations. Even those, who may be safely trusted every where else, will play false at elections. The remarks, which I have made concerning general elections, may be too often made, with equal truth, concerning other appointments to offices. But these things ought not to be. When the obligation and the importance of the great national duty required at elections—a duty prescribed by him who made us free—a duty prescribed that we may continue free—when all this shall be sufficiently diffused, and known, and felt; these things will not be. The people will then elect conscientiously; and will require conscientious conduct from those whom they elect.

A nation ought to encourage true patriotism in its members. The first step towards this encouragement is to distinguish between its real and its pretended friends. The discrimination, it is true, is often difficult, sometimes impracticable: but it is equally true, that it may frequently be made. Let the same care be employed, let the same pains be taken, to ascertain the marks of deceit and the marks of sincerity in publick life, and in intriguing for publick office, which are usually taken and employed in private life, and in solicitations for acts of private friendship. The care and pains will sometimes, indeed, be fruitless; but they will sometimes, too, be successful; at all times, they will be faithful witnesses, that those, who have employed them, have discharged their duty.

If a nation establish itself, or extend its establishment in a

country already inhabited by others; it ought to observe strict justice, in both instances, with the former inhabitants. This is a part of the law of nations, that very nearly concerns the United States. It ought, therefore, to be well understood. The whole earth is allotted for the nourishment of its inhabitants; but it is not sufficient for this purpose, unless they aid it by labour and culture. The cultivation of the earth, therefore, is a duty incumbent on man by the order of nature. Those nations that live by hunting, and have more land than is necessary even for the purposes of hunting, should transfer it to those who will make a more advantageous use of it: those who will make this use of it ought to pay, for they can afford to pay, a reasonable equivalent. Even when the lands are no more than sufficient for the purposes of hunting, it is the duty of the new inhabitants, if advanced in society, to teach, and it is the duty of the original inhabitants, if less advanced in society, to learn, the arts and uses of agriculture. This will enable the latter gradually to contract, and the former gradually to extend their settlements, till the science of agriculture is equally improved in both. By these means, the intentions of nature will be fulfilled; the old and the new inhabitants will be reciprocally useful; peace will be preserved, and justice will be done.

It is the duty of a nation to augment its numbers. The performance of this duty will naturally result from the discharge of its other duties: by discharging them, the number of persons born in the society will be increased; and strangers will be incited to wish a participation in its blessings. Among other means of increasing the number of citizens, there are three of peculiar efficacy. The first is, easily to receive all strangers of good character, and to communicate to them the advantages of liberty. The state will be thus filled with citizens, who will bring with them commerce and the arts, and a rich variety of manners and characters. Another means conducive to the same end is, to encourage marriages. These are the pledges of the state. A

third means for augmenting the number of inhabitants is, to preserve the rights of conscience inviolate. The right of private judgment is one of the greatest advantages of mankind; and is always considered as such. To be deprived of it is insufferable. To enjoy it lays a foundation for that peace of mind, which the laws cannot give, and for the loss of which the laws can offer no compensation.

A nation should aim at its perfection. The advantage and improvement of the citizens are the ends proposed by the social union. Whatever will render that union more perfect will promote these ends. The same principles, therefore, which show that a man ought to pursue the perfection of his nature, will show, likewise, that the citizens ought to contribute every thing in their power towards the perfection of the state. This right involves the right of preventing and avoiding every thing, which would interrupt or retard the progress of the state towards its perfection. It also involves the right of acquiring every thing, without which its perfection cannot be promoted or obtained.

Happiness is the centre, to which men and nations are attracted: it is, therefore, the duty of a nation to consult its happiness. In order to do this, it is necessary that the nation be instructed to search for happiness where happiness is to be found. The impressions that are made first, sink deepest; they frequently continue through life. That seed, which is sown in the tender minds of youth, will produce abundance of good, or abundance of evil. The education of youth, therefore, is of prime importance to the happiness of the state. The arts, the sciences, philosophy, virtue, and religion, all contribute to the happiness, all, therefore, ought to receive the encouragement, of the nation. In this manner, publick and private felicity will go hand in hand, and mutually assist each other in their progress.

When men have formed themselves into a state or nation, they may reciprocally enter into particular engagements, and, in this manner, contract new obligations in favour of the mem-

bers of the community ; but they cannot, by this union, discharge themselves from any duties which they previously owed to those, who form no part of the union. They continue under all the obligations required by the universal society of the human race—the great society of nations. The law of that great and universal society requires, that each nation should contribute to the perfection and happiness of the others. It is, therefore, a duty which every nation owes to itself, to acquire those qualifications, which will fit and enable it to discharge those duties which it owes to others. What those duties are, we shall now very concisely and summarily inquire.

The first and most necessary duty of nations, as well as of men, is to do no wrong or injury. Justice is a sacred law of nations. If the law of the great society of nations requires, as we have seen it to require, that each should contribute to the perfection and happiness of others ; the first degree of this duty surely is, that each should abstain from every thing, which would positively impair that perfection and happiness. This great principle prohibits one nation from exciting disturbances in another, from seducing its citizens, from depriving it of its natural advantages, from calumniating its reputation, from debauching the attachment of its allies, from fomenting or encouraging the hatred of its enemies. If, however, a nation, in the necessary prosecution of its own duties and rights, does what is disagreeable or even inconvenient to another, this is not to be considered as an injury ; it ought to be viewed as the unavoidable result, and not as the governing principle of its conduct. If, at such conduct, offense is taken, it is the fault of that nation, which takes, not of that nation, which occasions it.

But nations are not only forbidden to do evil ; they are also commanded to do good to one another. The duties of humanity are incumbent upon nations as well as upon individuals. An individual cannot subsist, at least he cannot subsist comfortably, by himself. What is true concerning one, is true con-

cerning all. Without mutual good offices and assistance, therefore, happiness could not be procured, perhaps existence could not be preserved. Hence the necessity of the duties of humanity among individuals. Every one is obliged, in the first place, to do what he can for himself ; in the next, to do what he can for others ; beginning with those with whom he is most intimately connected. The consequence is, that each man is obliged to give to others every assistance, for which they have a real occasion, and which he can give without being wanting to himself. What each is obliged to perform for others, from others he is entitled to receive. Hence the advantage as well as the duty of humanity. These principles receive an application to states as well as to men. Each nation owes to every other the duties of humanity. It is true, there may be some difference in the application, in this as well as in other instances : but the principles of the application are the same. A nation can subsist by itself more securely and more comfortably than an individual can ; therefore the duty of mutual assistance will not, at all periods, be equally indispensable, or return with equal frequency. But when it becomes, as it may become, equally indispensable ; and when it returns, as it may return, with equal frequency ; it ought, in either case, to be equally performed. One individual may attack another daily : a longer time is necessary for the aggression of one nation upon another. The assistance, therefore, which ought to be given to the individual daily, will be necessary for the nation only at more distant intervals of time. But between nations, what the duties of humanity lose in point of frequency, they gain in point of importance, in proportion, perhaps, to the difference between a single individual, and all those individuals of whom the nation is composed.

One nation ought to give to another, not only the assistance necessary to its preservation, but that also which is necessary to its perfection, whenever it is wanted, and whenever, consistently with other superiour duties, it can be given. The cases

in which assistance ought to be demanded, and those in which it ought to be given, must be decided respectively by that nation which demands, and by that of which the demand is made. It is incumbent on each to decide properly; not to demand, and not to refuse, without strong and reasonable cause.

It may, perhaps, be uncommon, but it is certainly just, to say that nations ought to love one another. The offices of humanity ought to flow from this pure source. When this happily is the case, then the principles of affection and of friendship prevail among states as among individuals: then nations will mutually support and assist each other with zeal and ardour; lasting peace will be the result of unshaken confidence; and kind and generous principles, of a nature far opposite to mean jealousy, crooked policy, or cold prudence, will govern and prosper the affairs of men. And why should not this be the case? When a number of individuals, by the social union, become fellow citizens, can they, by that union, divest themselves of that relation, which subsists between them and the other—the far greater—part of the human species? With regard to those, can they cease to be men?

The love of mankind is an important duty and an exalted virtue. Much has been written, much has been said concerning the power of *intellectual* abstraction, which man possesses, and which distinguishes him so eminently from the inferior orders of animals. But little has been said, and little has been written, concerning another power of the human mind, still more dignified, and, beyond all comparison, more amiable—I may call it the power of *moral* abstraction.

All things in nature are individuals. But when a number of individuals have a near and striking resemblance, we, in our minds, class them together, and refer them to a species, to which we assign a name. Again; when a number of species have a resemblance, though not so near and striking, we, in the same manner, class them also together, and refer them to a genus, to

which we likewise assign a name. Different genera may have a resemblance, though still less close and striking; we refer them to a higher genus, till we arrive at *being*, the highest genus of all. This is the progress of intellectual abstraction.

We are possessed of a moral power, similar in its nature and in its progress—a principle of good will as well as of knowledge. This principle of benevolence is indeed primarily and chiefly directed towards individuals, those especially, with whom we are or wish to be most intimately connected. But this principle, as well as the other, is capable of abstraction, and of embracing general objects. The culture, the improvement, and the extension of this principle ought to have made, in the estimation of philosophers, as important a figure among the moral, as the other has made among the intellectual powers and operations of the mind; for it is susceptible of equal culture, of equal improvement, and of equal extension.

“After having,” says the illustrious Neckar, in his book concerning the importance of religious opinions,⁷ “proved myself a citizen of France, by my administration, as well as my writings, I wish to unite myself to a fraternity still more extended, that of the whole human race. Thus, without dispersing our sentiments, we may be able to communicate ourselves a great way off, and enlarge, in some measure, the limits of our circle. Glory be to our thinking faculties for it! to that spiritual portion of ourselves, which can take in the past, dart into futurity, and intimately associate itself with the destiny of men of all countries and of all ages!”

To the same purpose is the sentiment of Cicero, in his beautiful treatise on the nature and offices of friendship.⁸ “In tracing the social laws of nature,” says he, “it seems evident, that man, by the frame of his moral constitution, is supposed to consider himself as standing in some degree of social relation to the

⁷ Pref. 19.

⁸ c. 5.

whole species in general; and that this principle acts with more or less vigour, according to the distance at which he is placed with respect to any particular community or individual of his kind."

This principle of benevolence and sociability, which is not confined to one sect or to one state, but ranges excursive through the whole expanded theatre of men and nations, instead of being always acknowledged and always recommended, as it ought to have been, has been altogether omitted by some philosophers: by some, its existence seems to have been doubted or denied.

"Some sort of union," says Rutherford, in his institutes of natural law,⁹ "there is between all nations: they are all included in the collective idea of mankind, and are frequently spoken of under this general name. But this is not a social union: the several parts of the collective idea, whether we consider the great body of mankind as made up of individuals or of nations, are not connected, as the several parts of a civil society are, by compact among themselves: the connection is merely notional, and is only made by the mind, for its own convenience."

The very enlarged active power, concerning which I speak, is, to this day, as far as I know, without an appropriated name. The term *philanthropy* approaches near, but does not reach it. We sometimes call it *patriotism*, by a figurative extension of that term, which, in its proper meaning, denotes a circle of benevolence limited by the state, of which one is a member. When we speak of the most exalted of all characters, of the man who possesses this virtue, we generally describe him, by a metaphor, a "citizen of the world." A "man of the world," which would be the more natural expression, though it is in common use, is used to convey a very different idea.

If the general observations, which I have before made concerning the nature, the structure, and the evidence of language,

⁹ Vol. 2. 463, 464.

be well founded, the particular remarks I have now made will appear to be striking and just.

This power of moral abstraction should be exercised and cultivated with the highest degree of attention and zeal. It is as necessary to the progress of exalted virtue, as the power of intellectual abstraction is to the progress of extensive knowledge. The progress of the former will be accompanied with a degree of pleasure, of utility, and of excellence, far superiour to any degree of those qualities, which can accompany the latter. The purest pleasures of mathematical learning spring from the source of accurate and extended intellectual abstraction. But those pleasures, pure as they are, must yield the palm to those, which arise from abstraction of the moral kind.

By this power, exerted in different proportions, the commonwealth of Pennsylvania, the empire of the United States, the civilized and commercial part of the world, the inhabitants of the whole earth, become objects of a benevolence the warmest, and of a spirit the most patriotick; for custom, the arbitress of language, has not yet authorized a more appropriate epithet. By this power, a number of individuals, who, considered separately, may be so minute, so unknown, or so distant, as to elude the operations of our benevolence, yet, comprehended under one important and distinguished aspect, may become a general and complex object, which will warm and dilate the soul. By this power the capacity of our nature is enlarged; men, otherwise invisible, are rendered conspicuous; and become known to the heart as well as to the understanding.

This enlarged and elevated virtue ought to be cultivated by nations with peculiar assiduity and ardour. The sphere of exertion, to which an individual is confined, is frequently narrow, however enlarged his disposition may be. But the sphere, to the extent of which a state may exert herself, is often comparatively boundless. By exhibiting a glorious example in her con-

stitution, in her laws, in the administration of her constitution and laws, she may diffuse reformation, she may diffuse instruction, she may diffuse happiness over this whole terrestrial globe.

How often and how fatally are expressions and sentiments perverted! How often and how fatally is perverted conduct the unavoidable and inveterate effect of perverted sentiment and expression! What immense treasures have been exhausted, what oceans of human blood have been shed, in France and England, by force of the expression "natural enemy!" 'Tis an unnatural expression. The antithesis is truly in the thought: for natural enmity forms no title in the genuine law of nations, part of the law of nature. It is adopted from a spurious code.

The foregoing rules and maxims of national law, though they are the sacred, the inviolable, and the exalted precepts of nature, and of nature's Author, have been long unknown and unacknowledged among nations. Even where they have been known and acknowledged, their calm still voice has been drowned by the solicitations of interest, the clamours of ambition, and the thunder of war. Many of the ancient nations conceived themselves to be under no obligations whatever to other states or the citizens of other states, unless they could produce in their favour a connexion formed and cemented by a treaty of amity.

At last, however, the voice of nature, intelligible and persuasive, has been heard by nations that are civilized: at last it is acknowledged that mankind are all brothers: the happy time is, we hope, approaching, when the acknowledgement will be substantiated by a uniform corresponding conduct.

How beautiful and energetick are the sentiments of Cicero on this subject. "It is more consonant to nature," that is, as he said a little before, to the law of nations, "to undertake the greatest labours, and to undergo the severest trouble, for the preservation and advantage of all nations, if such a thing could be accomplished, than to live in solitary repose, not only without pain, but surrounded with all the allurements of pleasure and wealth.

Every one of a good and great mind, would prefer the first greatly before the second situation in life." "It is highly absurd to say, as some have said, that no one ought to injure a parent or a brother, for the sake of his own advantage; but that another rule may be observed concerning the rest of the citizens: such persons determine that there is no law, no bonds of society among the citizens, for the common benefit of the commonwealth. This sentiment tends to dissolve the union of the state. Others, again, admit that a social regard is to be paid to the citizens, but deny that this regard ought to be extended in favour of foreigners: such persons would destroy the common society of the human race; and if this common society were destroyed, the destruction would involve, in it, the fate also of beneficence, liberality, goodness, justice. Which last virtue is the mistress and the queen of all the other virtues."¹⁰ By justice here, Cicero clearly means that universal justice, which is the complete accomplishment of the law of nature.

It has been already observed, that there is one part of the law of nations, called their voluntary law, which is founded on the principle of consent: of this part, publick compacts and customs received and observed by civilized states form the most considerable articles.

Publick compacts are divided into two kinds—treaties and sponsions. Treaties are made by those who are empowered, by the constitution of a state, to represent it in its transactions with other nations. Sponsions are made by an inferiour magistrate or officer, on behalf of the state, but without authority from it. Such compacts, therefore, do not bind the state, unless it confirms them after they are made. These take place chiefly in negotiations and transactions between commanding officers, during a war.

Though the power of making treaties is usually, it is not necessarily annexed to sovereign power. Some of the princes

¹⁰ Cic. de off. l. 3, c. 5, 6.

and free cities of Germany, though they hold of the emperour and the empire, have nevertheless the right of making treaties with foreign nations: this right, as well as several other rights of sovereignty, the constitution of the empire has secured to them.

With a policy, wiser and more profound, because it shuts the door against foreign intrigues with the members of the union, no state comprehended within our national government, can enter into any treaty, alliance, or confederation.¹¹

It is in the constitution or fundamental laws of every nation, that we must search, in order to discover what power it is, which has sufficient authority to contract, with validity, in the name of the state.

A treaty is valid, if there has been no essential defect in the manner, in which it has been made; and, in order to guard against essential defects, it is only necessary that there be sufficient power in the contracting parties, that their mutual consent be given, and that that consent be properly declared.

It is a truth certain in the law of nature, that he who has made a promise to another, has given to that other a perfect right to demand the performance of the promise. Nations and the representatives of nations, therefore, ought to preserve inviolably their treaties and engagements: by not preserving them, they subject themselves to all the consequences of violating the perfect right of those, to whom they were made. This great truth is generally acknowledged; but too frequently an irreligious disregard is shown to it in the conduct of princes and states. But such a disregard is weak as well as wicked. In publick as in private life, among sovereigns as among individuals, honesty is the best policy, as well as the soundest morality. Among merchants, credit is wealth; among states and princes, good faith is both respectability and power.

¹¹ Cons. U. S. art. 1, s. 10.

A state, which violates the sacred faith of treaties, violates not only the voluntary, but also the natural and necessary law of nations; for we have seen that, by the law of nature, the fulfilment of promises is a duty as much incumbent upon states as upon men. Indeed it is more incumbent on the former than on the latter; for the consequences both of performing and of violating the engagements of the former, are generally more important and more lasting, than any which can flow from engagements performed or violated by individuals. Hence the strict propriety, as well as the uncommon beauty of the sentiment—that if good faith were banished from every other place, she should find an inviolable sanctuary at least in the bosoms of princes.

Every treaty should be illuminated by perspicuity and candour. A tricking minister is, in real infamy, degraded as much below a vulgar cheat, as the dignity of states is raised above that of private persons. Ability and address in negotiation may be used to avoid, never to accomplish a surprise.

Fraud in the subsequent interpretation, is equally base and dishonourable as fraud in the original structure of treaties. In the scale of turpitude, it weighs equally with the most flagrant and notorious perfidy.

Treaties and alliances are either personal or real. The first relate only to the contracting parties, and expire with those who contract. The second relate to the state, in whose name and by whose authority the contract was made, and are permanent as the state itself, unless they determine, at another period, by their own limitation.

Every treaty or alliance made with a commonwealth is, in its own nature, real; for it has reference solely to the body of the state. When a free people make an engagement, it is the nation which contracts. Its stipulations depend not on the lives of those, who have been the instruments in forming the treaty: nor even

on the lives of those citizens, who were alive when the treaty was formed. They change ; but the commonwealth continues the same.

Hence the stability and the security of treaties made with commonwealths. By the faithful observance of their treaties, the Cantons of Switzerland have rendered themselves respectable and respected over all Europe. Let it be mentioned to the honour of the parliament of Great Britain, that it has frequently thanked its king for his zeal and attachment to the treaties, in which he has engaged the nation.

The corruption of the best things and institutions, however, always degenerates into the worst. The citizens of Carthage prostituted the character of their republick to such a degree, that, if we may believe the testimony of an enemy, *Punica fides* became proverbial, over the ancient world, to denote the extreme of perfidy.

As the United States have surpassed others, even other commonwealths, in the excellence of their constitution and government ; it is reasonably to be hoped, that they will surpass them, likewise, in the stability of their laws, and in their fidelity to their engagements.

In the great chart of the globe of credit, we hope to see American placed as the very antipode of Carthaginian faith.

OF MAN AS A MEMBER OF THE GREAT COMMONWEALTH
OF NATIONS.

(Text from No. 16 of Bibliography)

CHAPTER IX

OF MAN, AS A MEMBER OF THE GREAT COMMONWEALTH OF NATIONS

Every civil society, under whatever form it appears, whether governed merely by the natural laws of such a society, or by them and civil institutions superadded—every such society, not subordinate to another, is a sovereign state.

Those, who unite in society, lived, before their union, in a state of nature: a state of nature is a state of equality and liberty. That liberty and that equality, belonging to the individuals, before the union, belong, after the union, to the society, which those individuals compose. The consequence is, that a society is subjected to no power or authority without it; that it may do what is necessary for its preservation; that it may exercise all its rights, and is obliged to give an account of its conduct to no one. But these things constitute what is called sovereignty. Every state, therefore, composed of individuals, free and equal, is a state sovereign and independent. The aggregate body possesses all the rights of the individuals, of whom it is formed.

Another consequence is, that the rights of any one state are naturally the same as those of every other. States are moral persons, who live together in a natural society, under the law of nations. To give a state a right to make an immediate figure in the great society of nations, it is sufficient, if it be really sovereign and independent; that is, it must govern itself by its own authority.¹ Thus, when the United Colonies found it necessary to dissolve the political bonds, which had connected them

¹ Vat. b. I, s. 4.

with Great Britain, and to assume among the powers of the earth the separate and equal station, to which the laws of nature and of nature's God entitled them; they had a right to publish and declare, as, in fact, they did publish and declare, that "they were free and independent states; and that, as free and independent states, they had full power to levy war, to conclude peace, contract alliances, establish commerce, and to do all other acts and things, which independent states may of right do;" though, at that time, no articles of confederation were agreed upon; nor was any form of civil government instituted by them.

A number of individuals, who have formed themselves into a society or state, are, with regard to the purposes of the society, bound to consider themselves as one moral person. But the rest of mankind, who are not parties to this social compact, are under no obligation to take notice of it; and may still consider the society as a large number of unconnected persons. This personality—I know no better expression for it—of a state must, as to other nations, be derived from their consent and agreement. But when a society have once associated, and considered and announced themselves to other nations as a moral person, this consent and agreement ought not to be refused, without solid and special reasons, which will justify the refusal. On this consent and agreement, the mutual and mutually beneficial intercourse of nations is founded: whatever, therefore, promotes this intercourse, should be zealously encouraged; whatever prevents or interrupts it, should be cautiously avoided.

Though one state has, by an unequal alliance, formed a connexion with another state more powerful; still the weaker state is to be reckoned in the class of sovereigns. To the weaker state, the unequal alliance may secure the most assistance; on the stronger, it may reflect the most honour; but it leaves both the same rank among the society of nations.

We may go further; if a state, in order to provide for its own safety, finds it necessary to place itself under the protection of

another; and, in consideration of that protection, stipulates to perform equivalent offices, without divesting itself of the right of self-government; such a state ceases not to preserve its place among sovereigns. The payment even of tribute, though it may diminish the dignity of the society, by no means destroys or impairs its sovereignty or its rights.

Two sovereign states may employ the same executive magistrate, or bear allegiance to the same prince, without any dependence on each other; and each may retain all its national rights, free and undiminished. This last, under the house of Stuart, was the case of England and Scotland, before the nation of Great Britain was formed by their union. This last, also, as shall be hereafter shown at large, was the case of Great Britain and the American colonies, before the political connexion between them was declared to be dissolved.

But one people who have passed under the *dominion* of another, can no longer form a state: they can no longer retain a place in the great society of nations. Of that great society, equality is the basis and the rule. To this equality, the inferiority of subjection and the superiority of command are, alike, repugnant.

This equality of nations is the great and general foundation of national rights. In this matter, no regard is had to names. On the great theatre of the world, empires, kingdoms, commonwealths, principalities, dukedoms, free towns, are all equally imperial. A society, which, without subordination to any other, exercises within itself all the essential powers of society, is sovereign, and has all the rights of a sovereign and independent state; however narrow its territories; however small its numbers may be.

Every nation deserves consideration and respect; because it makes an immediate figure in the grandest society of the human race; because it is independent of all earthly power; and because it is an assemblage of a number of men, who, doubtless, are more considerable than any individual.

With regard to precedency, or the first place among equals, power and antiquity are grounds, upon which it is claimed or allowed. Into this question, the forms of government do not enter.

The natural state of individuals we have already seen to be a state of society and peace: such also is the natural state of nations. This state, it is the duty of nations, as well as of individuals, to preserve and improve. But among nations, as well as among individuals, differences and causes of difference will, sometimes, unavoidably arise. Over independent nations there is no coercive authority, to which recourse may be had for a decision of their controversies. What, then, shall be done, in order to terminate or adjust them? Much may be done; much ought to be done, before the fatal appeal is made to the dernier resort of sovereigns.

In some peculiar situations, it is more prudent, as well as more honourable, to abandon than to claim a right; to disregard, than to resent an injury: but, by nations, even this laudable and generous conduct should be observed with great prudence and circumspection, and in such a manner as, instead of cowardice, to discover magnanimity. When this conduct can be so observed, what a glorious example does it exhibit to the world! "A king of France ought not to revenge the wrongs of a duke of Orleans," was nobly said by a monarch of an elevated mind. Might it not also be said, that it is not every petty offence, which ought to provoke the dignified energy of sovereign power? Suppose a picture, disrespectful to Lewis the fourteenth, had been exhibited in Holland; was this a sufficient occasion for drawing forth the great monarch at the head of the armies of France? Was it a sufficient occasion for drawing him forth at the head of those armies against a power, comparatively inconsiderable, and trembling to its centre from a conscious sense of its own inferiority?

Nec deus intersit, nisi nodus vindice dignus.

On some occasions, it may be proper to claim a right, or take notice of an injury, merely with a determined and heroick purpose of ceding the former, and of forgiving the latter. This mode of proceeding, adopted at a proper time, in a proper manner, and by a proper person, has a great and a useful effect. It displays the good sense and superiour judgment of him, who observes it; and secures the esteem, perhaps the friendship of him, towards whom it is observed.

Controversies often happen, when neither of the parties to them is intentionally wrong: they arise from misapprehensions or mistakes. In such cases, nothing more is necessary for an amicable accommodation, than candid conference and mutual explanation. "There are two kinds of disputation," says Cicero,² "one, by argument and reason; the other, by violence and force. To determine controversies by the former belongs to man; by the latter, to the brutes. To the latter we ought never to have recourse, but when all hopes of success by the former are proved to be unavailing." If in every minute particular, an entire coincidence of sentiment and interest cannot take place; concessions, in the course of a negotiation, may be made on both sides; and, in this manner, a satisfactory adjustment of every difference may be effectuated.

If the parties themselves, notwithstanding their peaceful and proper inclinations, cannot finally agree upon the terms, according to which the difference should be adjusted; those terms may, in many instances, be arranged and settled by the kind and benevolent mediation of a common friend. Delicate, indeed, but highly useful is the office of a mediator. Address, prudence, a winning smoothness, but, above all, a most strict impartiality are the rare qualifications, which he ought to possess. Possessing these, he will favour what is due to justice and right; but remembering, at the same time, that his office is to conciliate, and not to judge, his leading effort will be to preserve or to procure

² De off. l. i, c. ii.

peace, and to prevail on him, who has even justice on his side, to relax something, if such a relaxation shall be necessary for accomplishing a purpose so desirable and so humane. In the Alcoran, it is delivered as an indispensable injunction, that if two nations of the faithful will go to war, the others shall interpose and force the aggressor to make satisfaction, and afterwards lay both under an obligation to live, for the future, in peace and friendship.³

If, unfortunately, neither negotiation nor friendly interposition of disinterested and benevolent powers shall prove effectual, for determining a controversy between two nations; there is another method remaining, by which mutual irritation and much more dreadful extremities may be prevented between those, who have no common judge upon earth, to whom they can appeal. This method is, to refer the matter in dispute to the award of arbitrators.

This mode of decision has been embraced by nations, the most powerful and the most wise. When the Athenians and the citizens of Megara had a dispute concerning the property of the island of Salamis, five Lacedemonian umpires were chosen to settle their contested claims. Some of the Italian states, in the early ages of Rome, submitted their controversies to the determination of the Romans. The Romans themselves, haughty and domineering as they were, and proud of the character *debellare superbos*, proposed to the Samnites, that the subject of their contention should be referred to the arbitration of their common friends and allies.⁴ The Druids, those revered ministers of a mysterious superstition, were the umpires between nations at war, and frequently brought matters to an accommodation, when the belligerent powers were on the very instant of an engagement. "It is cruel and detestable," says Thucydides, "to

³ Puff. 556, b. 5, c. 13, s. 7.

⁴ Liv. 1. 8, c. 23.

treat him as an enemy, who is willing to submit his case to an arbitration.”⁵

In all their alliances with one another, and even in those, which they have formed with the neighbouring powers, the Swiss have used the wise precaution to ascertain, beforehand, the manner, in which their differences should be left to the award of arbitrators, in case it should prove impracticable to adjust them upon amicable terms. This prudent and judicious policy has contributed, in no small degree, to maintain the Helvetican republick in that flourishing state, which has secured its liberty, and rendered it respectable over all Europe.⁶

When the sentence of the arbitrators is given, it ought to be obeyed; unless it be flagrantly partial, manifestly unjust, or clearly beyond the powers given by the submission. If the award is upon the very point disputed, it can never be manifestly unjust, since it has been rendered doubtful by the dissension of the parties.

It has been the opinion of some very respectable and well informed writers, that it would be highly convenient, and even somewhat necessary, that congresses of a number of states should be held, in which the differences of contending parties might be determined by those altogether disinterested in them; and in which, likewise, some effectual means might be devised and carried into execution, for compelling nations at war to conclude a peace upon fair and equitable conditions. In the course of the present century, two general congresses have been held in Europe—one at Cambray; the other at Soissons: but they were nothing more than pompous farces, acted, with great parade, by those, who wished to appear solicitous for an accommodation, but who, in fact, were little solicitous to promote it.⁷

⁵ Gro. 486, 487.

⁶ Vat. b. 2, s. 329.

⁷ Vat. b. 2, s. 330.

If justice cannot be obtained in any of the peaceful modes abovementioned; a nation has then a right to do itself justice. But even this ought to be done, when it can possibly be done, without proceeding to the last direful necessity of commencing a war. Reprisals may be made. If one nation has got into its possession what belongs to another, and will not restore it; if it refuses to pay a just debt, or to make reparation for an injury; that other nation may seize property belonging to the first, may apply it for its own benefit, in discharge of what is due, together with interest and damages; or it may hold the property in pledge, until satisfaction be made.

The subject of reprisals is so delicate and interesting that the nature and the extent of the right to make them deserve a careful and accurate investigation.

We have already seen,⁸ that a nation is to be considered as a moral person, having an understanding and will peculiar to itself: as such it is considered by the law of nations. The consequence necessarily is, that every act of this moral or collective person must, in the view of that law, be the concurrent act of its several members.

From the same principles, the property of each of the members must, with regard to other states, be deemed the property of the whole nation. In some degree, this is, in truth, the case; because the nation has power over the riches of the citizens; and because those riches form a part of the national wealth. All those, who compose a nation, making, in the consideration of foreign states, one whole, or one single person; all their property must be considered as the property of that single person. It is in the power of a nation to establish, among its citizens, a community of goods; but whether this is done, or is not done, the separate property of those citizens can neither be known nor discriminated by other states. The unavoidable result is, that, if one nation has a right to any part of the goods of another, it

⁸ Ante p. 304. 305.

has a right to the goods of its citizens, till the right be satisfied or discharged. The unavoidable result, again, is, that when it is justifiable to make reprisals, they may be made on the property of any of the citizens, as well as on that of the nation. From this rule, one exception has been made, and deserves to be established. This exception is made in favour of a deposit trusted to the faith of the nation, which has a right to make reprisals. This deposit has been made only in consequence of the reliance, which the owner had on this faith : this faith ought to be respected, even in the case of an open and declared war. For this reason, in France, in England, and in some other countries of Europe, the money, which hostile foreigners have placed in the publick funds, has been considered as sacred from the rights of reprisals, and even of war.

He who, for the injustice done by a nation, makes reprisals upon the property of its citizens indiscriminately, cannot be accused of seizing the property of one person in order to satisfy the debt of another. It is a demand against the state, to the discharge of which every citizen is bound to contribute his just proportion. It is the duty and business of the nation to provide, that those citizens, upon whom the reprisals fall immediately, should be indemnified for every thing beyond that share, which, on a fair assessment, they ought to pay. The nation ought to go farther : if the reprisals have been occasioned originally by the injustice or violence of some of its members ; those members should be compelled to make satisfaction for every loss, which has arisen from their conduct.

Though the property of the private citizens, from the nature and the necessity of the case, must, in many, perhaps, in most instances, be considered by foreign states as liable for their demands against the nation ; yet where publick property can be known and certainly distinguished, it is unquestionably proper, that such property should, in the first place, be the selected object of reprisals, if to reprisals it be easily or conveniently

accessible. The principles of humanity and the dictates of magnanimity suggest, with equal force, the reasonableness and propriety of this discrimination, whenever it can be made.

As the property of a nation, or of the citizens of a nation, may be seized by reprisals, in order to compel it to do justice ; so, on some occasions, the citizens themselves may be seized, in consequence of the same principles, and may be detained until full satisfaction has been received. This mode of proceeding was known among the Grecians by a name, which may be literally translated *mancatching*; Ἀνδρολήψια. At Athens, the law permitted the relations of him, who had been assassinated in a foreign country, to apprehend three persons of that country, and detain them, till the assassin was punished or delivered up.

In making reprisals, three precautions should be inviolably observed. 1. They ought not to be made without the authority of the nation. Though reprisals are not war ; and though their proper use is to prevent war ; yet they approach to a war, and are often followed by one. They are, therefore, proceedings of too much publick moment, to be carried on under the direction and at the discretion of individuals ; probably, of individuals immediately and particularly interested in them. In all civilized countries, therefore, it is the unvaried practice, that when a citizen considers himself as injured by a foreign state, he applies to the sovereign power of his nation for permission to make reprisals. 2. Reprisals ought to be made only for a demand, which is both just and certain. If it be doubtful or unliquidated, the first application should be for such steps as may be necessary to ascertain its reasonableness and its extent. 3. The reprisals should be in a due proportion to the demand. General reprisals, the grand pensionary De Wit used to say, were scarcely to be distinguished from an open war.

We have now seen that the citizens, in their persons and in their fortunes, may be accountable for the conduct of the na-

tion: so, on the other hand, the nation may sometimes be accountable for the conduct of its private citizens.

The state should protect the citizen, should defend him from injury, and should procure reparation for injuries which he has sustained. So, likewise, the nation should not suffer its citizens to commit injuries against the citizens of other states; it ought to disclaim the conduct of such as offer injuries; and ought to compel or to give satisfaction for the injuries which have been offered.

It is impossible, however, that, even in the best regulated state, the government should be able to superintend the whole conduct of all the citizens, and to restrain them within the precise bounds of duty and obedience: it would be unjust, therefore, to impute to the nation, or to the government, all the faults or offences, which its members may commit. Hence it does not necessarily follow, that one has received an injury from a nation, merely because he has received an injury from a citizen belonging to that nation. To a whole state, the follies, the injuries, or the crimes of a particular person ought not to be immediately ascribed: in every state, wicked and disorderly citizens are unhappily to be found: let such be held responsible for the consequences of their crimes and disorders.

This doctrine is certainly reasonable and just; but if a nation wishes not to be involved in the punishment of her citizens, she should sedulously avoid the impropriety and the offence of becoming an accomplice in their injuries and crimes. In their injuries and crimes she becomes an accomplice, when she approves or ratifies them, and when she affords protection and security to those, who have committed them. In such cases, the nation may justly be considered as even the author, and the citizens as only the instruments, of the wrong or outrage which has been done.

When the offending citizen escapes into his own country, his

nation should oblige him to repair the damage, if reparation can be made; should punish him according to the measure of his offence; or, when the nature and the circumstances of the case require it, deliver him up to the offended state to meet his doom there. This is frequently done with regard to atrocious crimes, such as are equally contrary to the laws and the safety of all nations.

In states, which are most strictly connected by friendship and good neighbourhood, they go farther still. Even with regard to common injuries, which are prosecuted civilly, whether for reparation of damage, or for a slight civil punishment, the citizens of two neighbouring states are reciprocally compelled to appear before the magistrate of the country, in which they are accused of having offended. On a requisition of this magistrate, which is called a letter rogatory, they are cited judicially, and compelled by their own proper magistrates to appear. "An admirable institution!" exclaims Vattel,⁹ in a tone of admiration, "by which many neighbouring states live together in peace and harmony, and seem to form but one and the same commonwealth." This institution is in force through all Switzerland.

If we could restrain, would it be proper to restrain the pleasing and animating reflection, that even the most admired institutions of Europe are improved, while they are adopted by the United States? For the trial and punishment of every kind of offence, prosecuted criminally, and, therefore, on common law principles, locally, the following provision is made in our national constitution.¹⁰ "A person charged, in any state, with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state, having jurisdiction of the crime." In civil causes of a transitory nature, no such provision is necessary; but a much

⁹ B. 2, s. 76

¹⁰ Art. 4, s.

better one is made. In Switzerland, controversies depending between citizens of different states must be decided by the magistrates of a state, of which one party, but not the other, is a citizen. But, in the United States, for controversies depending between citizens of two different states, a tribunal is formed and established, impartial, and equally independent of both.

The foregoing remarks exhibit, in a very striking point of view, the numerous, the near, and the important relations, by which states and the members of states may be connected together. We here discover the much famed institutions of Alfred the Great, extended on a national scale. In the great society of nations, we see each citizen bound for the good behaviour of all, and all bound for the good behaviour of each. As the principles of society, humanity, benevolence, and liberality shall become more and more regarded and cultivated, the rights and duties of different nations, and of the citizens of different nations, will become more and more studied, and will be better and better practised and observed. In this study, the present century has witnessed great and manifest improvements. In this study all men are interested: it is rich in delight: it is inestimable in importance: its maxims should be known by every citizen of every free state.

The relations existing between different states and the citizens of different states, and the rights and duties arising from those relations, form a constituent part of the common law. In that country, from which the common law has been brought, the law of nations has always been most respectfully and attentively adopted and regarded by the municipal tribunals, in all matters, concerning which it is proper to have recourse to that rule of decision. The law of nations, in its full extent, is a part of the law of England.¹¹ The infractions of that law form a portion of her code of criminal jurisprudence. In civil transac-

¹¹ 3 Burr. 1481.

tions between the citizens of different states, that law has, in England, been received in its most ample latitude.

One branch of that law, which, since the extension of commerce, and the frequent and liberal intercourse between different nations, has become of peculiar importance, is called the law of merchants. This system of law has been admitted to decide controversies concerning bills of exchange, policies of insurance, and other mercantile transactions, both where citizens of different states, and where citizens of the same state only, have been interested in the event.¹² This system has, of late years, been greatly elucidated, and reduced to rational and solid principles, by a series of adjudications, for which the commercial world is much indebted to a celebrated judge, long famed for his comprehensive talents and luminous learning in general jurisprudence.

Another branch of the law of nations, which has also become peculiarly important by the extension of commerce, is the law maritime. In a cause depending in the court of king's bench in England, and tried at one of the assizes, my Lord Mansfield, the great judge to whom allusion has been just now made, was desirous to have a case made of it for solemn adjudication; not because he himself entertained great doubts concerning it; but in order to settle the point, on which it turned, more deliberately, solemnly, and notoriously; as it was of an extensive nature; and especially as the maritime law is not the law of a particular country, but the general law of nations: *non erit alia lex Romæ, alia Athenis; alia nunc, alia posthac; sed et apud omnes gentes et omni tempore, una eademque lex obtinebit.*¹³

In the plan of my lectures, I proposed a question, the greatness of which is selfevident—How far, on the principles of the

¹² In commercial cases, all nations ought to have their laws conformable to each other. *Fides servanda est; simplicitas juris gentium prævaleat.* 3 Burr. 1672.

¹³ 2 Burr. 887.

confederation, does the law of nations become the municipal law of the United States? I mentioned, that it would be unwise, at that time, to hint at an answer. An answer I mean not to give even now: but I deem it highly proper now to state the nature, the extent, and the importance of the question. It points to a course new and unexplored.

We have seen the divine origin; we have seen the amazing extent; we have seen the uncommon magnitude of the law of nations: we have, in part, seen, likewise, how ineffective the execution of that law, under human authority, has hitherto been.

Amicable agreement between parties in controversy has been recommended, and recommended with great propriety, where the recommendation can take effect: but controversy, which has arisen, and which, from the very supposition of the case, subsists between the parties, is certainly not the most natural guide to lead to an amicable accommodation. The mediation of a disinterested and benevolent power has been recommended likewise: but this mediation, though it enhances the merit and displays the beauty of the candid, the peaceful, and the disinterested virtues, affords no reasonable security, that the exertion of those virtues will be accompanied with the wished for effect. To arbitration recourse has been advised: but to the institution of arbitrators, the previous consent of the parties in controversy is requisite: and how, against the unwilling, is the award of the arbitrators to be enforced?

What is next to be done? The same disposition or the same mistake, which, on one of the sides, must have given birth to the controversy, will probably communicate to it vigour and perseverance. Nay, that disagreement of mind between the parties, which must have taken place when the controversy commenced, is likely to be increased, instead of being diminished, by the frequent, numerous, and mutual irritations, which will unavoidably happen in the prosecution of it. All the modes of adjustment, which have been hitherto mentioned, presuppose the

reconciliation of irritated minds. But must the peaceful adjustment of controversies between states—an adjustment so salutary and so necessary to the human race—depend on events so very precarious, so very improbable? Must the alternatives in disputes and differences between the dignified assemblages of men, known by the name of nations, be the same, which are the prerogatives of savages in the rudest and most deformed state of society—voluntary accommodation, or open war, or violent reprisals, inferiour, in odium, only to war? Individuals unite in civil society, and institute judges with authority to decide, and with authority also to carry their decisions into full and adequate execution, that justice may be done and war may be prevented. Are states too wise or too proud to receive a lesson from individuals? Is the idea of a common judge between nations less admissible than that of a common judge between men? If admissible in idea, would it not be desirable to have an opportunity of trying whether the idea may not be reduced to practice? To return to the original question—has or has not our national constitution given us an opportunity of making this great and interesting trial?

Let us turn our most scrutinizing attention to the situation, in which, on the principles of that system, the states and the people, composing the American Union, stand with regard to one another; the situation, in which they stand with regard to foreign nations: and the situation, in which they stand with regard to the government of the United States.

With regard to one another, they have, by ordaining and establishing the national constitution, engaged to “form a more perfect union,” “to ensure domestick tranquillity,” “to establish justice:”¹⁴ they have engaged “that the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states:”¹⁵ they have engaged that no state shall enter

¹⁴ Preamb.

¹⁵ Art. 4. s. 2.

into "any treaty, alliance, or confederation;" ¹⁶ "nor, without the consent of congress, into any agreement or compact with another state." ¹⁷

With regard to foreign nations, the states, composing the American Union, have made an engagement precisely in the terms of the last mentioned engagement, which they have made with regard to one another—absolutely to enter into no treaty, alliance, or confederation with foreign nations; and to enter into no agreement or compact with them, unless with the consent of congress.¹⁸

With regard to the government of the United States, they have engaged that the judicial power of the United States shall extend "to controversies between two or more states; between a state and the citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states; and between a state, or the citizens thereof, and foreign states, citizens, or subjects." ¹⁹

The law of nations respecting treaties, alliances, and confederations must be thrown entirely out of the question: these are absolutely interdicted.

The law of nations respecting agreements and compacts between two or more states; between a state and the citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states; and between a state, or the citizens thereof, and foreign states, citizens, or subjects, will still be applicable, as before the national constitution was established, to controversies arising in all those different enumerated cases.

In all those different enumerated cases, the tribunals of the United States have judicial authority to decide. By what law

¹⁶ Art. I. s. 10.

¹⁷ Ibid.

¹⁸ Art. I, s. 10.

¹⁹ Art. 3, s. 2.

shall their decisions be governed? Before the establishment of the national government, controversies happening in those enumerated cases, if determined at all, must have been determined by the principles and rules of the law of nations. But before that establishment, there was no power to determine them judicially by any law.

We have already seen that, in England, the courts of common law, in cases, to which the law of nations, and particularly in cases, to which one great branch of it, the law of merchants is applicable, have made approved application of that law, and have received it, in its fullest extent, as a part of the law of England. Should a similar conduct be observed by the tribunals of the United States, in the numerous and very important cases, to which the national constitution extends their judicial authority?

If a similar conduct ought to be observed by those tribunals; what an immense improvement has taken place in the application and administration of the law of nations! Hitherto that great law has been applied and administered by the force or by the pleasure of the parties in controversy: in the United States, it can now be applied and administered by impartial, independent, and efficient, though peaceful authority.

This deduction, if properly founded, places the government of the United States in an aspect, new, indeed, but very conspicuous. It is vested with the exalted power of administering judicially the law of nations, which we have formerly seen to be the law of sovereigns.

It has been already observed, that the maxims of this law ought to be known by every citizen of every free state. Reasons, and very sufficient ones, were suggested, why this should be the case. A new reason, striking and illustrious, now appears, why the maxims of this law ought to be particularly known and studied by every citizen of the United States. To every citizen of the United States, this law is not only a rule of conduct, but may be a rule of decision. As judges and as jurors, the admin-

stration of this law is, in many important instances, committed to their care.

What a beautiful and magnificent prospect of government is now opened before you! The sluices of discord, devastation, and war are shut: those of harmony, improvement, and happiness are opened! On earth there is peace and good will towards men! On contemplating such a prospect, though only by the eye of a sublime imagination, well might the ardent and elevated Henry address the congenial ardour and elevation of Elizabeth—O most excellent and rare enterprise—Thought rather divine than human!

To us this prospect is realized by happy experience: how thankful ought we to be in enjoying it! how zealous should we be to secure it to ourselves and to our latest posterity! how anxious should we be to extend its example, its influence, and its advantages to the remotest regions of the habitable globe!

DESCRIPTIVE BIBLIOGRAPHY OF WORKS OF AND RELATING TO
JAMES WILSON
1742-1798

I

LCP: Library Company of Philadelphia.
HSP: Historical Society of Pennsylvania.
LC: Library of Congress.
WLCL: William L. Clements Library.

Considerations / on the / Nature / and the / Extent / of the Legisla-
tive Authority / of the / British / Parliament. / Philadelphia : /
Printed and Sold by William and Thomas Bradford, / at the London
Coffee House. / M.DCC.LXXIV

Collation; pp. [i]-iv, [1]-35

Signatures: A to E in 4s.

20.5 cm.

LCP, HSP, LC, WLCL

This is reprinted in part in S. E. Morison's *American Revolution, Sources and Documents*.

2

An Address to the Inhabitants of the Colonies Submitted to the
Continental Congress.

The manuscript of this, in Wilson's handwriting, is in the Papers of the Continental Congress, Library of Congress, No. 24, ff. 217-232. It is reprinted in the Library of Congress edition of the *Journals of the Continental Congress*, IV, 134-46. The Committee of which this was the report, was appointed by a resolution of January 24th, 1776, and consisted of John Dickinson, James Wilson, William Hooper, James Duane and Robert Alexander. Mr. Worthington C. Ford has commented "A copy of this document is in

James Madison's Note Book No. 1, to which Madison appended the following, 'This address was drawn by Mr. Wilson, who informed the transcriber that it was meant to lead the public mind into the idea of Independence, of which the necessity was plainly foreseen by Congress: but that before it could be carried through Congress, the language became evidently short of the subsisting maturity for that measure, and the Address was in consequence dropped.'

3

Considerations / on the / Bank / of / North-America / Philadelphia :
/ Printed by Hall and Sellers, 1785.

Collation: pp.[1] to 35.

Signatures: A to D in 4s, E in 2.

17 cm.

HSP, LC.

4

Address to the Citizens of Philadelphia, at the State House, October 6th, 1787.

In the *Pennsylvania Packet*, October 10, 1787.

5

The Substance / of a / Speech / delivered by / James Wilson, Esq. /
Explanatory of the general Principles of the proposed / Foederal
Constitution; / Upon a Motion made by the / Honorable Thomas
M'Kean, / in the Convention of the State of Pennsylvania. / On
Saturday the 24th of November, 1787. / Philadelphia: / Printed and
Sold by Thomas Bradford, in Front-Street, / four Doors below the
Coffee-House, MDCCLXXXVII.

Collation: pp. 1 to 10, and one extra leaf containing advertisement
on verso.

20 cm.

This speech seems to have been reported by Alexander J. Dallas, editor of the *Pennsylvania Herald*, as the language attributed to M'Kean is almost exactly the same as that given in the *Herald*. Thomas Lloyd, who published the *Debates* of the Convention (q. v.) objected to this version. See note under that title.

6

An / Examination / of the / Constitution / for the / United States / of / America, / Submitted to the People / by the / General Convention, / at Philadelphia, the 17th Day of September, 1787, / and since adopted and ratified / by the / Conventions of Eleven States, / chosen for the purpose of considering it, being all / that have yet decided on the subject. / By an American Citizen. / To which is added, / a Speech / of the / Honorable James Wilson, Esquire. / on the same subject. / Philadelphia: Printed by Zachariah Poulson, Junr.. in Fourth- / Street, between Market and Arch-Streets. / M.DCC.LXXXVIII.

Collation: 1 p. 1., pp. 3-33.

Signatures: A to D in 4s.

20.5 cm.

LCP.

This was a pamphlet by Tench Coxe.

7

Debates / of the / Convention, / of the / State of Pennsylvania, / on the / Constitution, / proposed for the / Government / of the / United States / In Two Volumes / Vol. I / Taken accurately in Short-Hand, by / Thomas Lloyd, / [two lines of quotation] / Printed by Joseph James, / in Philadelphia, A. D. M.DCC.LXXXVIII

Collation: pp. [1] to 147 (verso of p. 147 blank); 1 leaf of index; 1 leaf of errata, verso blank.

Signatures: [A] to T in 4s.

23 cm.

Volume II apparently never appeared. Bradford's publication of his *Substance of a Speech delivered by James Wilson* (q. v.) brought from Lloyd the following printed proposal to publish the Debates: "Several of the editor's friends having supposed a pamphlet printed by Thomas Bradford entitled *Substance of a Speech delivered by James Wilson Esq.*, etc., was written by him, he conceives himself under the necessity of counteracting any impression such an opinion may have made upon the public, by assuring them he was not the writer, but pledges himself to give that address in the fore-

mentioned volume without mutilation or misrepresentation. December 3, 1787." This volume has a second title as follows: "The / Speeches / of / Thomas McKean & James Wilson, / Esquires; / in which / They have / unfolded / the / Principles / of / Free Government, / Demonstrated / the / Superior Advantages / of this / Constitution / And Answered Every / Objection / Hitherto Suggested. /" This describes copy in University of Pennsylvania Law Library. See McMaster and Stone, p. 217.

8

Address / to the / Citizens of Pennsylvania / Calculated to shew the Safety,—Advantages—and Necessity of Adopting the Proposed Constitution of the United States. / In which are included Answers to the Objections which have been made to it. [colophon:] Philadelphia: Printed by Hall and Sellers.

Collation: pp. [1 to 4.]

Said by P. L. Ford, in his Bibliography of Pamphlets on the Constitution, to contain Wilson's speech of 6 October, 1787. I have never seen a copy of it. It is certainly not at the Historical Society of Pennsylvania, the Library Company of Philadelphia, the American Antiquarian Society, the Boston Athenæum, the New York Public Library, the New York Historical Society, the Library of Congress or the William L. Clements Library at the University of Michigan.—(Ed.)

9

Account / of the / Grand Federal / Procession, / Philadelphia, July 4, 1788 / To which are added, / Mr. Wilson's Oration, / and a Letter / on the / Subject [!] of the Procession / (Price 5 d. h.) / M. Carey, Printer.

Collation: 1 p. 1., pp. 1-22.

Signatures: 1 leaf; A to C in 4s, last leaf being blank.

19.5 cm.

HSP.

10

A / Charge / delivered by / The Hon. James Wilson, Esq. / One of the Associate Justices of the Supreme / Court of the United States, / to the / Grand Jury, / impannelled for the / Circuit Court / of the /

United States, / Holden for the Middle Circuit at the Capitol, / in the / City of Richmond, / and District of Virginia, / On Monday, the 23rd Day of May, 1791. / Richmond: / Printed by Augustine Davis. / M,DCC,XCI.

Collation: title page (verso blank); text, pp. [3]–[29]; verso of p. 29 blank.

Signatures: [A] to B in 8s.

20 cm.

LC

II

An / Introductory / Lecture / to a / Course of Law Lectures. / by James Wilson L.L.D. / to which is added. / A Plan of the Lectures. / Philadelphia: From the Press of T. Dobson. / MDCCXCI. Collation: 2 p. 1, pp. [5]–96.

Signatures: 2 leaves; A to L in 4s, M in 2.

22 cm.

In addition to the copy described, the Historical Society of Pennsylvania has a copy of this book from which the dedication page has been removed and an extra leaf inserted before the title. Upon this extra leaf the dedication appears in manuscript, signed by James Wilson. The dedication is to "The President of the United States and Mrs. Washington." On the title page is the signature "Go. Washington" in the President's well known hand.

12

Commentaries / on the / Constitution / of the / United States of America, / With that Constitution prefixed, / in which are unfolded, / the / Principles of Free Government, / and the Superior / Advantages of Republicanism Demonstrated. / By James Wilson, L.L.D. / . . . / and / By Thomas M'Kean, L.L.D. / . . . / the whole extracted from Debates published in Philadelphia by / T. Lloyd. / London: / Printed for J. Debrett, opposite Burlington House, Piccadilly; / J. Johnson, St. Paul's Church Yard; and J. S. Jordan, / No. 166, Fleet Street. / 1792

Collation: 2 p. 1.; pp. [5]–19; verso of 19 being blank; pp. 20–23;

pp. 25-147, verso of 147 being blank; 1 leaf of errata, verso being blank.

Signatures: [A] to S in 4s, T in 2, 1 extra leaf (the errata)
22 cm.

This describes the copy in the WLCL. It is nevertheless, quite apparent from the printing and the different paper used for the two preliminary leaves, and pp. 20-23 that these sections of the book were set up anew and printed in England, whereas the rest of the book was simply the sheets of the Philadelphia edition of Lloyd's *Debates*. This also accounts for the irregular pagination. This corresponds also to the copy in the NYPL.

13

Title exactly same as preceding.

Collation: 2 p. l.; pp. 5-19, verso of 19 being blank; pp. 20-23; pp. 25-147, verso of 147 being blank; 1 leaf of index, 1 leaf of errata.

Signatures: A to T in 4s.

This describes the LC copy.

14

Title exactly same as preceding.

Collation: 3 p. l.; pp. 20-23; pp. 25-147, verso of 147 blank.

Signatures: 3 leaves; D to S in 4s, T in 2.

20 cm.

This describes the copy at the HSP. Whether this is merely a defective copy of the preceding depends on how many copies like this exist. Possibly it is another issue with the text of the Constitution omitted.

15

Commentaries / on the / Constitution / of the / United States of America / Price Three Shillings / [main title] The / Speeches / of Thomas M'Kean & James Wilson, / Esquires; / in which / they have unfolded / the / Principles of Free Government, / Demonstrated / the Superior Advantages / of this / Constitution, / And Answered Every / Objection / Hitherto Suggested.

Collation: 2 p. 1.; pp. 5-19, verso of 19 being blank; pp. 20-23; pp. 25-147, verso of 147 being blank; 1 leaf of index and 1 leaf of errata.

Signatures: A to T in 4s.

20 cm.

This describes the copy in the University of Michigan Law Library. The fore-title given above appears on Nos. 10, 11, & 12, above. It seems as though in this case the first preliminary leaf had been printed in England and also pp. 20-23, whereas the rest again are merely the sheets of Lloyd's *Debates*. This main title is the second title of the original Philadelphia edition, i. e., No. 7 of this bibliography.

16

The / Works / of / the Honorable / James Wilson, L.L.D. / Late one of the Associate Justices of the Supreme / Court of the United States, and Professor of Law / in the College of Philadelphia. / Published under the Direction / of / Bird Wilson, Esquire. / [two lines of quotation] / Vol. I. / Philadelphia: at the Lorenzo Press, Printed for Bronson and Chauncey. / 1804.

Collation: Vol. I, [i]-xvi, 1-467

Vol. II, [i]-vi, 1-496

Vol. III, [i]-iv, 1-440.

22 cm.

17

The / Constitutionalist, / or / Amendments of the Constitution / proposed by the / Council of Censors, / supported by the / Writings and Opinions / of / James Wilson, L.L.D. / Montpelier, Vt. / Printed by Walton and Goss. / 1814

Collation: pp. [1]-80

Signatures: [A] to D in 4s, E in 2.

21.5 cm.

LC

18

Pennsylvania / and the / Federal Constitution / 1787-1788 / edited by / John Bach McMaster / and Frederick D. Stone. / Published

for the Subscribers by / The Historical Society of Pennsylvania / 1888.

Collation: pp. i-viii, 1-803

Signatures: 4 leaves; 50 numbered signatures in 8s; Sig. No. 51 in 2.

24.5 cm.

A full treatment of the subject. Chapter X reprints in extenso James Wilson's notes on the Debates in the Convention called by Pennsylvania to ratify the Constitution. Original manuscript in the Pennsylvania Historical Society.

19

Pamphlets / on the / Constitution of the United States / Published / during / its discussion by the People / 1787-1788 / Edited / with notes and bibliography / by Paul Leicester Ford. / Brooklyn, N. Y. / 1888.

Collation: pp. [i]-[xii], [1]-[452]

Contains Wilson's speech of October 6th, 1787.

20

Substance of an Address / to a / meeting of the Citizens of Philadelphia, / delivered, October sixth, MDCCLXXXVII, / by the honorable / James Wilson, Esquire, one of the delegates from the State of Pennsylvania to the / late Continental Convention. / Brooklyn, N. Y., 1888.

Collation: pp. 1-7.

This was a separate reprint from P. L. Ford's *Pamphlets on the Constitution*.

21

The Works of / James Wilson / Associate Justice of the Supreme Court of the / United States, and Professor of Law in / the College of Philadelphia / Being his Public Discourses upon / Jurisprudence and Political Science / Including Lectures as Professor of Law,

1790-92 / edited by / James DeWitt Andrews / [two lines of quotation] / Vol. I. / Chicago / Callaghan and Company / 1896.

Collation: Vol. I, [i]-xlvi, 1-576.

Vol. II, [i]-v, 1-623.

24 cm.

22

Biography / of the Signers to the / Declaration of Independence / by / John Sanderson / Philadelphia. / Published by R. W. Pomeroy / J. Maxwell Printer. / 1823.

The above was a nine volume set, which carried Sanderson's name on the title and on the second title of volumes 1 and 2. When volume 3 appeared, Sanderson's name continued on the title, but the second title gave Robert Waln, Jr., as the author. This continued to the fifth volume, inclusive. The sixth volume changed the title to

Biography / of the / Signers / to the / Declaration of Independence / Philadelphia / Published by R. W. Pomeroy / J. Maxwell Printer / 1824.

Here the second title still gives Waln as the author. This sixth volume has the Life of Wilson, pp. 113 to 175. Beginning with the seventh volume no author is given on either title page.

23

Sanderson's / Biography of the Signers / to the / Declaration of Independence / Revised and edited / by Robert T. Conrad, / . . . Philadelphia: / William Brotherhead. / 1865.

The biography of James Wilson has been greatly abridged from the original edition of Sanderson. It covers pp. 499-520.

24

James Wilson / in the / Philadelphia Convention / by / Andrew C. McLaughlin / Reprinted from the Political Science Quarterly, Vol. XII, No. 1 / Boston / Ginn & Company / The Athenaeum Press / 1897.

Collation: 1 p. l., pp. 1-20.

25

James Wilson and the Formation of the Constitution.

Collation: pp. 481-504.

An address by Justice John M. Harlan of the Supreme Court of the United States, printed in the *American Law Review*, Vol. xxxiv, July-August, 1900.

26

James Wilson, James Smith and George / Ross, three Signers of the Decla-/ration of Independence who were members of the Cum-/berland County Bar./Historical Address/by/Hon. Edward W. Biddle/Delivered at the Court House, Carlisle, Pa., under the /auspices of the Historical Committee of the Carlisle/Civic Club, on Friday Evening, April 4, 1902.

Collation: pp. 1-37.

23 cm.

27

James Wilson/and the Constitution/the opening Address/in the Official Series of Events known as/The James Wilson Memorial/by Burton Alva Konkle/. . . Delivered before/the Law Academy of Philadelphia/on November 14, 1906/Published by Order of the Law Academy/1907.

Collation: pp. 1-40.

25 cm.

28

The James Wilson Memorial/by Burton Alva Konkle.

Collation: pp. 1-37.

26 cm.

An extract from the *American Law Register*, Vol. 55 O. S., 46 N. S.

29

James Wilson, Patriot,/and/The Wilson Doctrine/by/Lucien Hugh Alexander/of the Philadelphia Bar/Reprinted from the

North American Review, / Mid-November Issue, 1906; Vol. 183, No. 8.

Collation: pp. 1-19.

30

James Wilson, Nation Builder / (1742-1798) / . . . A Biographic Monograph / by / Lucien Hugh Alexander M. A. / of the Philadelphia Bar.

Collation: pp. 1-9, 98-109, 137-146, 165-276.

25.5 cm.

Extracts from the January, February, March and May, 1907, issues of the *Green Bag*, Vol. xix, Nos. 1, 2, 3, 5.

31

An Oration / on / James Wilson / by / Hampton L. Carson, LL.D. / Reprinted from the American Law Register for January 1907. / Vol. 55, No. 1.

Collation: 1 p. 1., pp. 35-46.

26 cm.

32

James Wilson / 1742-1798 / by Margaret Center Klingelsmith / Librarian of the Biddle Memorial Law Library at the University of Pennsylvania.

Collation: pp. 151-221.

From *Great American Lawyers*, edited by William Draper Lewis, Philadelphia. The John C. Winston Company, 1907, Vol. I.

33

James Wilson and the So-Called Yazoo Frauds, / by Margaret C. Klingelsmith.

Collation: pp. 1-27.

25 cm.

An extract from the *University of Pennsylvania Law Review*, January 1908, Vol. 56 O. S., 47 N. S.

34

Biographical Story of / the Constitution / A Study of the / Growth of the American Union / by / Edward Elliott / Professor of Politics in Princeton University / G. P. Putnam's Sons / New York and London / The Knickerbocker Press / 1910.

Chapter III, pp. 53-76, is entitled "James Wilson: Growth through Speculative Forecast."

35

The Legal Theories / of / James Wilson / by / Randolph G. Adams / Reprinted from the University of Pennsylvania Law Review for June 1920.

Collation: pp. 337-355.

28.5 cm.

36

James Wilson and James Iredell, by Hampton L. Carson.

Collation: pp. 68-93.

Extract from the *Proceedings of the Twenty-second Annual Session of the North Carolina Bar Association*, Vol. 22, pp. 68-9.

37

James Wilson and James Iredell, A Parallel and a Contrast, by Hampton L. Carson.

Collation: pp. 123-131.

Extract from the *Journal of the American Bar Association*, Vol. VII. The substance of this paper is the address to the North Carolina Bar Association.

38

Political Ideas / of / The American Revolution / Britannic-American Contributions to the / Problem of Imperial Organization / 1765 to 1775 / By / Randolph Greenfield Adams, Ph.D. / . . . / Trinity College Press / Durham, N. C. / 1922

Collation: 1 p. l., pp. [1]-207.

19.5 cm.

Chapter VII is entitled "The Legal Theories of James Wilson."

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